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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MOTOR VEHICLE SOFTWARE
CORPORATION

Plaintiff,

vs.

CDK GLOBAL, INC.; THE
REYNOLDS AND REYNOLDS
COMPANY; COMPUTERIZED
VEHICLE REGISTRATION, INC.
a/k/a CDK VEHICLE
REGISTRATION, INC.

Defendants.

CASE NO.: 2:17-cv-00896-DSF-AFM

MVSC'S SECOND AMENDED
COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

**MVSC'S SECOND AMENDED COMPLAINT
FOR DAMAGES AND INJUNCTIVE RELIEF**

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INTRODUCTION

1
2 1. Plaintiff Motor Vehicle Software Corporation (“MVSC”) brings this
3 action to remedy and put a stop to ongoing federal and state antitrust violations being
4 committed by Defendants CDK Global, Inc. (“CDK”) and The Reynolds and
5 Reynolds Company (“Reynolds”), and their joint venture Computerized Vehicle
6 Registration, Inc. a/k/a CDK Vehicle Registration, Inc. (“CVR”).

7
8 2. MVSC provides electronic vehicle registration and titling services
9 (“EVR”). As an EVR provider, MVSC partners with state governments to issue the
10 physical registration, license plates, and titles for vehicles sold at car dealerships.
11 Electronic registration and titling has made the process far more convenient and
12 efficient for dealerships and consumers. Defendant CVR is a wholly owned joint
13 venture of CDK and Reynolds that (like Plaintiff MVSC) provides EVR services.

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15 3. In order to process the registration and title with a state, EVR providers
16 require basic information about the car sale – namely, vehicle, buyer, and financing
17 details. That data is stored on a car dealer’s Dealer Management System software,
18 otherwise referred to as a dealer’s “DMS.” There is no other place where the data is
19 stored, and without access to this data, it is impossible to provide EVR services.

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21 4. In addition to storing a dealer’s data, the DMS manages every function
22 of a dealer’s business from sales and inventory to service and parts. It is the mission-
23 critical enterprise software that a car dealership cannot operate without. Defendants
24 CDK and Reynolds are by far the two giants of the DMS market, controlling close to
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1 80 percent of the United States market by number of dealers, and approximately 90
2 percent when measured by vehicles sold. CDK and Reynolds have enormous
3 leverage over dealers. Not only is it deeply disruptive and expensive for a dealer to
4 switch DMS providers (switching takes up to a year of preparation and training), but
5 CDK and Reynolds also use their market power to compel dealers to submit to long-
6 term contracts of between five and seven years in length. As a result, CDK and
7 Reynolds have maintained their duopoly for over two decades.

10 5. CDK and Reynolds have leverage over dealers for another reason: while
11 dealers own the data on their DMS, CDK and Reynolds have seized control over
12 who is allowed to access the data. Many third-party vendors require access to dealer
13 data in order to perform essential tasks – such as EVR services – for the dealer.
14 CDK and Reynolds provide vendors access (for a fee) to the data on a dealer’s DMS
15 pursuant to formal third-party access programs. CDK’s arrangement is called the
16 Third Party Access (“3PA”) program, and Reynolds’s is called the Reynolds
17 Certified Interface (“RCI”) program. These programs allow third-party vendors to
18 access – in real time – the necessary data from a dealer’s DMS in order to provide
19 services for the dealership.

23 6. This case concerns an illegal horizontal agreement between CDK and
24 Reynolds to exclude MVSC from their third-party programs in order to prevent
25 MVSC from obtaining the data it needs to provide EVR services. The purpose of the
26 conspiracy is simple and obvious: by blocking MVSC’s access to the data on which
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1 its services depend, CDK and Reynolds seek to eliminate a formidable competitor to
2 CVR, their wholly owned joint venture. Money is the motive. CVR has for decades
3 served as a reliable cash cow for CDK and Reynolds; it has long been the largest
4 EVR provider in the United States, covering more states and processing more
5 transactions than any other provider. Through their illegal conspiracy to insulate
6 CVR from competition, CDK and Reynolds are seeking to protect that flow of
7 profits into their coffers.
8

10 7. CDK exercises substantial control over the decisionmaking and
11 operations of CVR, as demonstrated by numerous facts alleged below. In fact, CDK
12 exercises more than just substantial control over CVR, but actually directs its day-to-
13 day operations, including its marketing, dealer on-site visits, hiring and firing of
14 employees, budgets, investments in technology and services, and other functions
15 normally handled internally by a corporate entity. Thus, for purposes of antitrust
16 monopoly claims, CDK is properly considered to compete through CVR in the
17 relevant EVR markets.
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20 8. MVSC competes with CVR in two state EVR markets – Illinois and
21 California. In the Illinois EVR market, CVR maintains a monopoly of
22 approximately 95 percent market share. Real-time access to dealer data is a pre-
23 requisite to competing in Illinois because the state requires that a dealership provide
24 the registration and license plates to the car buyer at the time of sale. Participation in
25 the 3PA and RCI programs is the only means for an EVR provider to obtain this real-
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1 time access to dealer data. By blocking MVSC (and all other Illinois EVR
2 providers) from their third-party programs, CDK and Reynolds have ensured that
3 CVR will maintain its monopoly position in Illinois.
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5 9. In the California EVR market, CVR had a monopoly until a few years
6 ago. But in California – unlike in Illinois – a car buyer is not required to receive the
7 registration and license plates at the time of sale. Real-time access to dealer data
8 (and participation in the 3PA and RCI programs) has therefore not been necessary in
9 California. Instead, MVSC was able to obtain the required dealer data by other
10 means, either through companies that provided intermediary access to a dealer's
11 DMS or through a manual workaround whereby dealers ran a daily report with the
12 necessary data and then transmitted the information to MVSC. As a result, MVSC
13 was able to compete in the California EVR market based on the quality of its
14 products and services, which are vastly superior to CVR's and much preferred by car
15 dealerships. As one tangible example of the disparity in service quality, it takes
16 CVR a minimum of 30 days to process and ship registrations and license plates to car
17 buyers, whereas MVSC accomplishes the same in one day.
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22 10. Because CVR cannot compete with MVSC on quality and service, CDK
23 and Reynolds have engaged in a campaign to completely block MVSC's access to
24 dealer data in California. Not only have CDK and Reynolds blocked MVSC from
25 participating in their 3PA and RCI programs, but they have successfully cut off
26 MVSC's access through intermediaries. Worse, they are intimidating dealers with a
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1 drumbeat of near constant threats that if dealers continue to provide MVSC with
2 their data, then the dealers will be in breach of the DMS contract.

3 11. The facts of the illegal agreement to block MVSC from dealer data are
4 straightforward. The ringleaders are Scott W. Herbers, CVR's longtime general
5 manager who, while running CVR, simultaneously worked as a senior CDK
6 executive; Robert N. Karp, president of CDK's North American region; and Bob
7 Schaefer, Director of Reynolds's data services. The conspiracy has existed since at
8 least 2014, and continues to this day. Based on information from a participant in the
9 conversations, CDK even has a name for the illegal conspiracy – the “Closed
10 Category.” That is, EVR is a “closed category” to MVSC within the 3PA and RCI
11 programs. A senior CDK executive even told MVSC that there are those within
12 CDK who think the agreement is wrong and that MVSC should be able to compete
13 with CVR on equal footing, but that Mr. Herbers and Mr. Karp have rejected any
14 such argument. As detailed below, CVR has not been a mere bystander to the CDK
15 and Reynolds conspiracy – CVR executives were involved in numerous
16 conspiratorial conversations with with respect to keeping MVSC at a disadvantage
17 with respect to data access, including at meetings of CVR's Board of Directors.

18 12. CDK and Reynolds have enforced the illegal agreement with rigid
19 discipline. Every time MVSC has applied to participate in the 3PA and RCI
20 programs, CDK and Reynolds have said, “No.” Lower-level CDK and Reynolds
21 executives have admitted that the reason MVSC is not allowed to participate is
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1 because it is a competitor of CVR, and the decision to block MVSC was made “far
2 above” their level – i.e., by Mr. Herbers, Mr. Karp, and Mr. Schaefer. Sometimes
3 the rejection has been outright without explanation. Other times, CDK and Reynolds
4 have demanded an extortive fee – at first 33 percent, and with later applications, 25
5 percent of MVSC’s top-line revenues – to participate in the 3PA and RCI programs.
6 CDK and Reynolds knew MVSC could never accept such terms (MVSC would lose
7 money on every dealership and would no longer be able to operate as a going
8 concern) and the demands were therefore an effective refusal to deal. Moreover,
9 such demands were the opposite of what CDK and Reynolds stated publicly. For
10 example, CDK represents in its program guide: “Our 3PA pricing philosophy is
11 simple: standardized pricing for all customers.” But privately, CDK admitted to
12 MVSC that such “standardized pricing” does not apply to MVSC because it
13 competes with CVR. Remarkably, a top CVR executive confirmed that the extortive
14 price quotes were not serious and were simply designed as an effective refusal to
15 deal. He stated to MVSC: “I wish we would have asked for 85 percent of your
16 revenue. We don’t want you in the program.”

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22 13. This is not the first time that CDK and Reynolds have illegally
23 conspired. In February 2015, CDK and Reynolds entered into an agreement to block
24 data “integrators”—companies that specialize in pulling data from dealers’ DMS,
25 aggregating it, correcting errors, putting it into a standardized format, and delivering
26 it to vendors—from accessing dealer data. Indeed, it is that conspiracy that makes it
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1 impossible for MVSC to access dealer data through intermediaries: CDK and
2 Reynolds have agreed to block them. That conspiracy has therefore had a direct
3 impact on MVSC and any other vendor in need of dealer data. Moreover, pursuant
4 to their agreement to eliminate competition in the data integration market, CDK and
5 Reynolds also agreed not to compete with each other, even putting that agreement in
6 writing, with an effective date of February 18, 2015. The fact that CDK and
7 Reynolds have colluded to control access to dealer data generally corroborates that
8 they have colluded to block access to MVSC specifically.

11 14. For many dealers, the campaign to cut off MVSC and then convert
12 dealerships to CVR has worked. “I have really bad news,” one dealer wrote in
13 typical fashion. “We are not going to be able to keep [MVSC] since CDK is only
14 approving CDK Licensed approved vendors to have access to our [DMS].” Other
15 dealers have expressed genuine fear about the disruption caused by the blocking of
16 MVSC. “Help!” one dealer exclaimed. “Where do we go from here??” The
17 California New Car Dealers Association has even had to get involved. Representing
18 over 1,100 dealers, it is the country’s largest state association of franchised new car
19 dealers. The Association has advised some of its members that CDK’s and
20 Reynolds’s “conduct as it relates to the [EVR] program [is] troubling not only from a
21 business perspective but also from the damage it could do to consumers and the
22 DMV for the roadblocks it is creating in the vehicle registration process itself.”

1 15. To the extent MVSC has been able to retain dealerships, it is because of
2 MVSC's superior product and service and the dealers' belief that what CDK and
3 Reynolds are doing is wrong. Nevertheless, Defendants' conspiracy has had its
4 intended effect. By excluding MVSC from their 3PA and RCI programs, and
5 seeking to block MVSC from obtaining dealer data through other means,
6 Defendants' illegal conspiracy has protected CVR's monopoly in the Illinois EVR
7 market and created a dangerous probability that CVR will regain its monopoly
8 position in the California EVR market. The conspiracy has caused MVSC to suffer
9 millions of dollars in damages. It has also harmed competition by reducing dealer
10 choice (effectively preventing dealers from going with their preferred EVR
11 provider), degrading the quality of EVR services, increasing the quality-adjusted
12 price of EVR services, and eliminating competition in concentrated state EVR
13 markets.

14 16. As described in detail herein, CDK's and Reynolds' conspiracy is a per
15 se violation of Section 1 of the Sherman Act, *see infra* Count I; CDK and CVR are
16 liable for monopolization of the Illinois EVR market and attempted monopolization
17 of the California EVR market under Section 2 of the Sherman Act, *see infra* Counts
18 II and III; and all Defendants are liable for conspiracy to monopolize under Section 2
19 of the Sherman Act, *see infra* Count IV. Defendants' conduct is also prohibited by
20 California and Illinois state antitrust and unfair competition laws.

18. The allegations set forth herein are based on corporate knowledge and documents and information in MVSC's possession; discussions with current and former employees of Defendants; documents and emails that were drafted in whole or in part by Defendants and their current or former employees; publicly available documents, including Defendants' press releases, public statements, and filings with the Securities and Exchange Commission ("SEC"), news articles, scholarly articles, and court documents submitted in other proceedings; and documents and information from third parties, including automotive dealerships and state regulatory authorities.

19. Plaintiff Motor Vehicle Software Corporation (“MVSC”) is a California corporation with its corporate headquarters and principal place of business at 29219 Canwood Street, Suite #205, Agoura Hills, California 91301. Formed in 2005, MVSC provides Electronic Vehicle Registration (“EVR”) services to automobile dealerships in California, Oregon, and Illinois. MVSC is working to gain approval in the Virginia EVR program. MVSC is privately owned.

20. Defendant CDK Global, Inc. (“CDK”), is a Delaware corporation with its corporate headquarters and principal place of business at 1950 Hassell Road, Hoffman Estates, Illinois 60169. CDK has many employees and multiple offices in California. CDK’s headquarters for the western region of the United State are located at 1100 Town and Country Road, Suite 800, Orange, California 92868. CDK provides Dealer Management System (“DMS”) software and services to automobile dealerships throughout the United States, including in California, and has more than \$2 billion in annual revenues. In 2014, CDK was spun off from ADP, LLC, and is now an independent, publicly traded company in which ADP retains no ownership interest. Prior to the spin-off, CDK was referred to as ADP Dealer Services (collectively, referred to herein as “CDK”).

21. Defendant The Reynolds and Reynolds Company (“Reynolds”) is an Ohio corporation with its corporate headquarters and principal place of business at One Reynolds Way, Kettering, Ohio 45340. As with CDK, Reynolds provides DMS software and services to automobile dealerships throughout the United States, including in California. To service those dealerships in California, Reynolds has many employees that work in and travel to the state. Though formerly a publicly traded company, Reynolds was privately acquired in 2006.

22. Defendant CDK Vehicle Registration, Inc. a/k/a Computerized Vehicle Registration, Inc. (“CVR”) is a California corporation with its corporate headquarters and principal place of business at 1100 Town and Country Road, Suite 800, Orange,

California 92868, sharing an office with CDK's California headquarters. CVR was founded in 1992 and is a wholly owned joint venture of CDK and Reynolds, with CDK having an 80 percent and Reynolds a 20 percent ownership stake. CVR promotes itself as the national market leader in EVR, servicing more than 15,000 dealerships in 23 states and processing over 14 million EVR transactions a year.

JURISDICTION AND VENUE

23. This action arises under Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2; Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26; and California and Illinois state law.

24. This Court has jurisdiction over the federal claims pursuant to 28 U.S.C. §§ 1331 and 1337 and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367 because those claims are so closely related to the federal claims that they form part of the same case or controversy.

25. Venue is proper in this District pursuant to Sections 4, 12, and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22, and 26, and 28 U.S.C. § 1391(b), (c), and (d). One or more of the Defendants resided, transacted business, were found, or had agents in the District; a substantial part of the events giving rise to MVSC's claims arose in the District; and a substantial portion of the affected interstate trade and commerce described herein has been carried out in the District. In particular, MVSC and CVR reside and are headquartered in this District; CDK has its western region

1 headquarters in this District; and CDK and Reynolds serve many dealerships in this
2 District.

3 26. The Court has personal jurisdiction over Defendants because they are
4 engaged in ongoing and systematic business in the State of California. Defendants
5 have also engaged in the unlawful acts described in this Complaint with the
6 foreseeable or intended effect of causing substantial economic harm to MVSC in
7 California. Defendants purposefully availed themselves of the privilege of doing
8 business in California through the widespread promotion, sale, marketing, and
9 distribution of their products and services in the state. This lawsuit arises from and
10 relates to Defendants' California activities – namely, their unlawful conspiracy and
11 attempts to deny Plaintiff access to the DMS platforms of California automobile
12 dealerships and their attempted monopolization of the California EVR market.
13 Through their unlawful acts, Defendants have caused substantial economic harm in
14 California. This Court's exercise of jurisdiction over Defendants by California
15 courts is consistent with traditional notions of fair play and substantial justice.
16 Moreover, CVR is subject to general jurisdiction in California, because CVR's
17 principal place of business is in California.

18 27. Defendants are engaged in, and their activities substantially affect,
19 interstate commerce. CDK and Reynolds sell DMS services to automobile
20 dealerships throughout the United States, including in California, and their third-
21 party access programs make the data stored on their DMS platforms available on a
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1 nationwide basis. CVR sells EVR products and services to automobile dealerships
2 throughout the United States, including in California.

3 **FACTUAL ALLEGATIONS**

4 **I. The Relevant Product Markets**

5 28. The relevant product markets for MVSC's claims are: (1) the DMS
6 Market in the United States; and (2) the Illinois and California EVR Markets.

7 **A. The DMS Market**

8 29. Dealer Management System software is enterprise software designed
9 specifically for retail automotive dealerships. The software helps dealers manage
10 every aspect of their business from sales and inventory to service and parts. The
11 DMS has been analogized to the central nervous system of a car dealership.
12 Specifically, DMS software handles and integrates all of the critical business
13 functions of a car dealership, including sales, financing, inventory management (both
14 vehicle and parts), repair and service, accounting, payroll, marketing, and more. In
15 short, DMS software is the mission-critical software that enables dealerships to run
16 their operations and function as a business. Industry publications describe the DMS
17 as "the center of a dealer's entire retail management platform. It's impossible to
18 operate without it."

19 30. Importantly, the DMS is also the place where a dealer's data is stored,
20 such as vehicle, customer, and sales information.

21 31. DMS providers license and sell their software and services pursuant to
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1 written contracts. The DMS market is comprised of those providers – including
2 CDK and Reynolds – that sell and market DMS services to automobile dealerships in
3 the United States. Geographically, the DMS market is the United States. There is
4 public and industry recognition of the DMS market. There are no reasonable
5 substitutes for the enterprise software and services provided by DMS providers to
6 retail automotive dealerships.
7

8 **1. CDK and Reynolds Dominate the DMS Market**

9
10 32. CDK and Reynolds are by far the dominant providers in the DMS
11 market. Combined, CDK and Reynolds control approximately 75 percent of the
12 DMS market in the United States when measured using dealership rooftops (i.e.,
13 franchised stores), with CDK controlling approximately 45 percent of the market and
14 Reynolds controlling 30 percent. When measured using the number of vehicles sold
15 from franchised dealers – which is more relevant for antitrust purposes – CDK’s and
16 Reynolds’ market dominance is even more pronounced with a combined market
17 share exceeding 90 percent. This market dominance by CDK and Reynolds has been
18 stable for over three decades.
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22 33. Aside from CDK and Reynolds, the DMS market is diffuse, with an
23 array of DMS providers dividing up the remaining market share. These providers
24 are typically small, occupy a particular niche, and serve the country’s smaller car
25 dealerships.
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34. Based on the foregoing, it is no surprise that industry publications variously describe CDK and Reynolds as “the Big 2,” “the Duopoly,” “the two 400-pound gorillas,” and “the two giants of the DMS market.”

35. CDK and Reynolds have enormously lucrative DMS businesses. A single, small dealership will pay up to \$150,000 per year for the DMS software license and services offered by CDK and Reynolds. Mid-size dealership groups (5 to 10 stores) can pay \$1,500,000 or more per year, and large dealerships can easily pay over \$5,000,000 per year. Given the thousands of dealerships that CDK and Reynolds serve, and with profit margins exceeding 40 percent, CDK and Reynolds are tremendously profitable. CDK’s market capitalization is \$9.2 billion.

2. CDK and Reynolds Maintain Their Market Dominance by Exercising Significant Leverage Over Dealerships

36. CDK and Reynolds have powerful leverage over car dealerships, and they use that leverage to protect their dominant position and keep dealers in line.

37. First, CDK and Reynolds sell their DMS software and services pursuant to long-term contracts, typically between five and seven years in length. CDK and Reynolds therefore lock in their dealers with lengthy contracts.

38. Second, it is enormously difficult and disruptive for a dealer to switch DMS providers. One industry executive stated that changing DMS providers “is akin to a heart transplant.” CDK’s CEO recently acknowledged that “switching DMS providers can be very difficult. It [is] quite a process to change and takes time,

1 which is part of the reason that many dealers are hesitant to switch.” One large
2 dealer publicly referred to changing DMS providers as “mission impossible.” Both
3 Reynolds and CDK have publicly touted that their market positions are secure
4 because of this very fact.
5

6 39. Switching DMS providers is so difficult because it disrupts and changes
7 nearly every process that a dealer uses to operate. For a typical dealership to change
8 DMS providers, it takes at least a year of preparation, staff training, and testing
9 before the new system is even put into operation.
10

11 40. The experience of Hendrick Automotive Group, the largest privately
12 held dealership group in the country, is illustrative. In May 2016, Hendrick
13 announced that it had decided to switch from Reynolds to CDK, with the goal of
14 completing the transition by mid-2017. The fact that a large dealership had decided
15 to switch DMS providers was momentous news in the automotive industry.
16 However, just months later, CDK disclosed that Hendrick had decided against the
17 move after all. The switchover to CDK had already begun but was halted because of
18 the difficulty and disruption caused by the attempt. Hendrick remained with
19 Reynolds.
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23 41. Third, a dealer cannot operate without a functioning DMS. CDK and
24 Reynolds can paralyze a dealer’s business by altering the DMS or restricting critical
25 third-party applications from interacting with it.
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1 42. Fourth, the DMS houses a dealer's data, including data relating to
2 customer, sales, inventory, marketing, accounting, financial, and other information.
3 Although the data is owned by the dealership, CDK and Reynolds control who is
4 allowed to access it. Dealerships are therefore vulnerable because many third-party
5 vendors need to access the data stored on the DMS in order to provide services, such
6 as EVR. In short, DMS providers can severely disrupt a dealership's business
7 simply by switching off third-party access to essential data. As detailed below, that
8 is exactly what is happening here: CDK and Reynolds are blocking MVSC from
9 obtaining data that is needed to provide EVR services to dealerships and ultimately
10 to the customers of those dealerships.

11 43. Finally, Reynolds and CDK are vindictive when spurned by dealerships
12 that try to switch DMS providers. For dealers, that makes swapping DMS providers
13 not only a logistic nightmare, but a risky and litigious proposition. There is a large
14 collection of lawsuits brought by CDK and Reynolds against dealers that tried but
15 failed to switch DMS providers. The lawsuits tell the story of how deeply damaging
16 an unsuccessful change in DMS providers can be. One publicized case involved a
17 dealer that had been with Reynolds for over 20 years and tried to change providers.
18 Reynolds and the dealer ended up in court, with Reynolds refusing to release the
19 dealer's data stored on its DMS. The lawsuit tied up the dealer's business for
20 months, with the dealer eventually capitulating to an out-of-court settlement with
21 Reynolds.

1 44. The leverage that CDK and Reynolds exert over dealers is the source of
2 their long-standing duopoly. It also serves as a durable competitive advantage. The
3 DMS market has been so tightly controlled for so long by CDK and Reynolds that
4 even Microsoft Corp., the global software behemoth, could not compete with them.
5 Microsoft tried to enter the DMS market in 2006 but failed. In trying to take on
6 CDK and Reynolds, a Microsoft executive publicly conceded, “We kind of got ahead
7 of ourselves.” As Mr. Brockman of Reynolds summarized, given the difficulty
8 inherent in breaking into the DMS market, Microsoft and others “will not be an
9 effective competitor in this marketplace.”
10
11

12 **B. EVR Markets**

13 45. As noted above, the DMS houses a car dealership’s most important
14 data, including customer, vehicle, and sales information. Many third-party software
15 vendors need to access the data in order to perform essential tasks for the dealer.
16 One of those essential tasks is electronic vehicle registration and titling.
17
18

19 46. Twenty years ago, states registered and titled vehicles internally through
20 their respective Department of Motor Vehicles (“DMV”). Now, approximately 30
21 states have changed their laws to allow authorized, state-licensed firms from the
22 private sector to electronically register and title vehicles in partnership with the
23 state’s DMV. Only state-approved firms are permitted to operate as an EVR
24 provider in the state.
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1 47. Firms that provide EVR services require three categories of information
2 from a dealer's DMS: (1) car buyer identification; (2) vehicle identification; and
3 (3) financing information. The EVR provider processes that information with the
4 DMV (ensuring that all necessary information is complete and accurate); calculates
5 and transmits the requisite fees to the DMV; and then issues the registration stickers
6 and license plates to the car buyer. Once the registration is complete, the DMV
7 issues the title to the vehicle owner, whether to the car buyer (if the purchase was
8 outright) or to the lender (if the purchase was financed).

11 48. EVR offers many advantages over the prior brick-and-mortar approach.
12 Through EVR, registration and titling of vehicles is completed electronically. It
13 makes the process much quicker and more efficient, eliminates the need to go to the
14 DMV, reduces the amount of paperwork, and minimizes errors. Car buyers benefit
15 by receiving their registration and license plates quicker and with a lot less hassle.
16 Car dealerships benefit by having a third-party vendor ensure that the critical
17 functions of licensing and titling cars are performed accurately and promptly for the
18 dealer's customers as well as in compliance with specific deadlines imposed by
19 certain states, including California. And the government benefits from increased
20 efficiency and performance of an important governmental function, in addition to
21 freeing up resources at the DMV to perform other work.

26 49. Although states regulate the EVR providers within their boundaries,
27 states do not decide which EVR provider a dealership uses. Instead, dealerships
28

1 themselves select which authorized EVR provider will electronically register and
2 title the vehicles sold at their dealership. Once a dealership selects an EVR provider,
3 the parties notify the DMV and enter into a written contract, which are typically
4 month-to-month in length.
5

6 50. An EVR market is comprised of those vendors that are authorized to
7 provide EVR services within a given state. Each state's EVR market is a separate
8 geographic market. EVR services in one state are not substitutes for EVR services in
9 another state. Each state prescribes the metes and bounds of its particular EVR
10 market. Only those providers approved in a particular state are able to offer EVR
11 services within that state, such that an EVR provider in one state does not compete
12 with EVR providers operating only in other states. Similarly, a dealership in one
13 state cannot use an EVR provider licensed in another state.
14
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16 51. There is public and industry recognition of individual state EVR
17 markets. There is also public and industry recognition that EVR markets are
18 geographically confined to the state level.
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21 52. Individual state EVR markets are generally highly concentrated and
22 have high barriers to entry. For example, as described below, CVR has a monopoly
23 as the only effective EVR provider in several states, including Illinois, and there are
24 just three providers in California. New entrants to an EVR market face extensive
25 legal licensing and DMV requirements, as well as high capital and technological
26 startup costs.
27
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1 **1. MVSC and CVR Are Competitors in Certain EVR Markets**

2 53. **CVR.** CVR, short for Computerized Vehicle Registration, was founded
3 in 1992 and describes itself as the world's largest provider of EVR services. In the
4 United States, it provides EVR services to over 15,000 dealerships across 23 states.
5 It processes nearly 15 million EVR transactions annually. It is far and away the
6 largest EVR provider in the United States, covering more states and processing more
7 transactions than any other competitor.
8

9
10 54. CVR is wholly owned by CDK and Reynolds. In 1992, CDK and
11 Reynolds partnered to acquire CVR. CVR ensured that both Reynolds and CDK
12 partnered in the acquisition so that CVR could claim to dealers that its owners
13 controlled upwards of 90 percent of the DMS market, and that it had direct access to
14 the data stored on their DMS platforms. According to CVR itself, its exclusive
15 status as the only EVR provider with direct access to dealer data was a critical factor
16 in its rapid expansion and eventual dominance of state EVR markets.
17

18
19 55. Over the years, CVR has returned hundreds of millions of dollars in
20 profits to CDK and Reynolds. For decades, CVR has been an undeniable cash cow
21 and reliable moneymaker for its owners.
22

23 56. **CDK Manages and Controls CVR.** CVR is a wholly owned joint
24 venture of CDK (80 percent) and Reynolds (20 percent). CDK in particular wields
25 complete control over CVR's direction and management. It controls who is on
26 CVR's board of directors, and occupies most of the board seats (Reynolds also has
27
28

1 representatives on CVR's board). CDK executives not only hold supervising
2 authority over CVR's operations and personnel – CVR's general manager reports
3 directly to CDK's Vice President of Operations, North America – but CVR
4 executives are concurrently CDK executives. For example, for most of the past
5 decade, Scott Herbers was simultaneously general manager at CVR and a top
6 executive at CDK. In its public filings, CDK specifically states that it “holds a
7 controlling financial” and a controlling “management interest” in CVR.
8
9

10 57. CVR is treated as a division of CDK, not as an independent corporate
11 entity. For example, CDK rolls up and includes CVR's financial results in CDK's
12 consolidated and combined financial statements. CDK likewise controls CVR's day-
13 to-day activities. CVR employees are treated as CDK employees, with CDK email
14 addresses and job descriptions. CDK makes hiring and firing decisions of CVR's
15 employees. CDK posts new job listings for CVR. CDK and CVR also share
16 physical offices – CVR's headquarters are located within CDK's California offices.
17 CVR's operations are not even segregated to different floors, but sit side-by-side
18 with CDK's. CDK directs CVR's marketing efforts, drafting its marketing plans and
19 strategies for which dealers to target. CDK provides a regular list of dealerships to
20 CVR as their “priority hit list” on which CVR must focus (those dealerships are
21 often the ones served by MVSC and are being affected by CDK's intentional
22 interruption of that ability of MVSC to obtain data from those dealerships). CDK
23 account representatives also accompany CVR sales representatives on visits to
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1 current and prospective dealer customers. CDK also controls CVR's budgets and
2 capital investments. CDK directs whether (and how much) CVR will invest in its
3 services and technology to improve its product. CDK determines the areas of
4 investment, and directs how CVR's budget is allocated.

5
6 58. Given the foregoing, it is no surprise that CDK (and Reynolds) publicly
7 refer to CVR as "our" EVR service and CVR likewise markets itself as a unit of
8 CDK (and Reynolds). As CVR advertises on its website, "we are backed by the
9 leading DMS providers in the industry – CDK Global and Reynolds & Reynolds."

10
11 59. The above facts and others alleged in this complaint demonstrate that
12 CDK exercises complete control over the affairs and policies of CVR, directs its day-
13 to-day operations, and derives the full financial benefits (with Reynolds) from
14 CVR's activities. Accordingly, CDK is properly considered to compete in the
15 relevant EVR markets. To be a competitor at the level of a subsidiary, a subsidiary's
16 parent must have substantial control over the affairs and policies of the subsidiary. If
17 a parent in fact stands as the decisionmaking entity controlling the subsidiary – as
18 CDK does here with respect to CVR – then the parent is properly understood to be a
19 "competitor in the market" of the subsidiary. This is especially the case where the
20 parent not only controls the subsidiary's activities but also reaps all the financial
21 benefits, such as here where CVR's financials are rolled up and consolidated into
22 CDK's. CDK therefore competes in the relevant EVR markets.

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27 60. While substantial control is all that is required for a parent to be
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1 considered a competitor in the market of its subsidiary for purposes of Section 2 of
2 the Sherman Act, CDK goes beyond substantial control over CVR. The facts alleged
3 here demonstrate that CDK directly controls the day-to-day activities of CVR,
4 making CVR the alter-ego or agent of CDK.
5

6 61. **MVSC**. MVSC was formed in 2005 to compete in the California EVR
7 market. At the time, CVR controlled approximately 90 percent of the California
8 EVR market and therefore held a monopoly position. Market research exposed
9 widespread dealer dissatisfaction with CVR, primarily because of its poor service to
10 dealers and car buyers. MVSC therefore centered its business on providing top-
11 quality and personalized service and support to dealers and car buyers. As a result of
12 its service-oriented culture, MVSC has been able to make inroads into CVR's
13 monopoly position in California.
14
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17 62. MVSC's EVR product in California is called "DMVdesk." It is a web-
18 based service for providing EVR services with sophisticated tools for workflow and
19 inventory management. As a web-based application, there is no need to load
20 software onto a dealer's hard drive. DMVdesk is widely recognized as the most
21 efficient and easy-to-use EVR application in the market today.
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23

24 63. Building on DMVdesk's success, MVSC has created a new EVR
25 product called Vitu (pronounced "v-two," as in "version two"). Vitu automates even
26 more steps in the EVR process. It also allows dealers to process EVR transactions
27 across multiple stores through a single user interface. As MVSC expands to other
28

1 EVR markets, MVSC will introduce Vitu in those states and eventually California.

2 64. There are two state EVR markets at issue in this complaint: the Illinois
3 EVR market and the California EVR market.

4 **2. The Illinois EVR Market**

5
6 65. Illinois began allowing EVR services in 2005. Illinois mandates the use
7 of EVR for the registration and titling of every new vehicle sold in the state.
8
9 Therefore, every franchised automotive dealership must contract with an EVR
10 provider to perform those services. Illinois also requires that the printed registration
11 and license plates be provided to the car buyer at the time of sale. Illinois law
12 provides that a car buyer can be charged no more than \$25 for the EVR service.
13
14 EVR providers can charge up to \$10 for their services, with dealers able to add an
15 additional 1.5 times that amount, for a total of \$25.

16
17 66. CVR has a monopoly over the Illinois EVR market. It possesses
18 approximately 95 percent of the market, and has maintained that monopoly position
19 since Illinois began allowing EVR services in 2005.

20
21 67. MVSC is an approved EVR provider in Illinois, and has maintained an
22 office there since 2014. But like the other three EVR providers approved in Illinois
23 (Dealertrack, Electronic License Service, and S&S License and Title Service),
24
25 MVSC cannot make any inroads into the market for a very specific and undisputed
26 reason: CVR is the only EVR provider that is allowed direct access to CDK's and
27 Reynolds's DMS. That direct access enables CVR to obtain the required data from
28

1 the DMS instantaneously, which is necessary to comply with the state requirement
2 that the registration and license plates be provided to the car buyer at the time of sale.

3 68. Because MVSC does not have direct access to the DMS – due to CDK’s
4 and Reynolds’s concerted group boycott – MVSC is effectively blocked from
5 competing with CVR in Illinois.

6
7 69. As discussed below, there is no alternative to obtaining the data from a
8 dealer’s DMS. That is the only place the data is stored. Dealers do not and would
9 not enter the data into a separate platform just for EVR services. No dealer does it.
10 Doing so would eliminate many of the primary benefits of EVR services, chief
11 among them increased efficiency and decreased error rates.
12
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14 **3. The California EVR Market**

15 70. California began allowing EVR services in 1997. California is by far
16 the largest vehicle market in the United States. Consequently, it is also the largest
17 and most important EVR market.
18

19 71. Like Illinois, California mandates the use of EVR, and every dealership
20 must therefore contract with an EVR provider. Unlike Illinois, however, California
21 does not require that the printed registration and license plates be provided to the car
22 buyer at the time of sale. Instead, California requires that car buyers receive their
23 registration and license plates within 90 days of the purchase date. It is the
24 responsibility of the car dealership to comply with this requirement. If car buyers do
25 not receive their registration and license plates within 90 days of purchase, the
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1 dealer's business license from the DMV can be revoked.

2 72. California law provides that a car buyer can be charged no more than
3 \$29 for the EVR service, of which \$4 is paid to the DMV, and the remaining amount
4 is paid to the EVR provider. There is no statutory cap on what an EVR provider can
5 charge a dealer per transaction. Therefore, while an EVR provider could charge a
6 dealer much more than \$29 per transaction, the dealer can only pass through \$29 to
7 the car buyer. The dealer would have to bear the cost of any excess, which no dealer
8 is willing to do. Therefore, there is an effective cap of \$29 per transaction that an
9 EVR provider charges to dealers.
10
11

12 73. CVR entered the California EVR market in 1997. Until several years
13 ago, CVR maintained a monopoly in California, controlling approximately 90
14 percent of the EVR market.
15
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17 74. MVSC entered the EVR market in 2005. At first, MVSC made only
18 small inroads into CVR's monopoly. However, three factors have allowed MVSC to
19 compete with CVR in California: (1) car buyers are not required to receive their
20 registration and license plates at the time of sale; (2) California has fostered
21 competition in the EVR market as a matter of policy; and (3) MVSC's product and
22 service are far superior to CVR's.
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a. In California, Car Buyers Are Not Required To Obtain the Vehicle's Registration and License Plates at the Time of Sale

75. The most important factor that enabled MVSC to compete against CVR in California is that, unlike Illinois, California does not require that a car's registration and license plates be delivered to the car buyer at the time of sale. That means instantaneous access to a dealer's data is not required to provide EVR services in California. As a result, EVR providers that are not directly integrated with the CDK and Reynolds DMS platforms – i.e., every EVR provider other than CVR – have been able to provide EVR services by obtaining the necessary data from a dealer's DMS at a later time through different means. As described below, however, CDK and Reynolds in concert are systematically eliminating MVSC's ability to obtain the necessary data from the dealership's DMS in an effort to eliminate MVSC as a competitor in the California EVR market.

b. California Has Fostered Competition in the EVR Market as a Matter of Policy

76. Competition between EVR providers is a central purpose of California's EVR program, and the California legislature has taken steps to ensure a competitive EVR market. The legislature recently reaffirmed that maintaining EVR competition – in which providers compete to offer the highest-quality EVR service – is the official state policy.

77. In 2015, the legislature noted that certain EVR providers, including CVR, were attempting to undercut the standalone EVR market by “incentivizing dealers to enter into new EVR agreements by providing other services for free or at a heavily discounted rate. These additional services include dealer management systems, digital retailing services, or Web site management.” Concurrence in Sen. Amendments AB 605 (Gatto) (June 16, 2015). In other words, EVR providers were using what they charged dealers for their EVR product to subsidize the price of their other products and services. In response, the legislature enacted a new law “aim[ed] to clarify that the charge being paid by consumers for electronically filing title and registration documents with the DMV does not include costs associated with services unrelated to EVR.” *Id.*; see Cal. Vehicle Code § 4456.5(a)(2)). The law therefore preserved a discrete EVR market in which EVR providers compete with each other to deliver EVR-specific services, without drawing on their other products and services.

c. MVSC’s Product and Service Are Superior to CVR’s

78. Finally, MVSC has been able to compete with CVR because MVSC’s product and service are vastly superior. Because output and price are both regulated (i.e., EVR is mandated and the EVR fee to dealers is effectively capped, *see supra* Part 1.B.3), price is not a consideration for a dealership in selecting the EVR provider. Instead, EVR providers compete on the quality-adjusted price per registration. EVR providers differentiate themselves through customer service (to

dealers and buyers), speed of processing, accuracy, and the user-friendliness of their products.

79. Dealers much prefer MVSC's product and service to the EVR service provided by CVR. With respect to the product, MVSC's DMVdesk is a web-based program that is much more flexible than CVR's product, which must be installed on a dealer's hard drive. Dealers widely acknowledge that DMVdesk's user interface is simpler and easier to use. There is also more automation with DMVdesk, requiring fewer steps to complete the EVR process.

80. With respect to service, there is no comparison. In California – where EVR providers do not issue the registration and license plates at the point of sale, but instead process them after the purchase – it takes CVR at least 30 days and sometimes as much as two months to deliver the physical registration and license plates to car buyers. MVSC accomplishes the same in one day. CVR's months-long backlog versus MVSC's same-day turnaround provides a tangible example of MVSC's superior service as compared to CVR.

81. MVSC also offers 24/7 customer service – a dealership can call or message MVSC at any time of the day, and MVSC will respond almost immediately to help resolve any issues. MVSC provides extensive training for dealership employees to ensure they know how to use DMVdesk and understand the legal and technical requirements for EVR. MVSC also conducts monthly onsite visits to ensure that there are no latent issues that have not been addressed. Perhaps most

1 illustrative of the ways MVSC provides superior service to dealers, MVSC even
2 dispatches backup clerks to a dealership's offices when the dealership has someone
3 out sick or is understaffed.

4
5 82. In terms of quality control, MVSC's procedures exceed anything in the
6 market. MVSC audits the paperwork and information for every EVR transaction.
7 MVSC even videotapes the processing of every piece of paper so that if issues arise
8 later, there is a video record of what MVSC actually received. Due to MVSC's
9 fastidious procedures, MVSC has the lowest error rate in the market.

10
11 83. Finally, MVSC has also brought innovation to the market in terms of
12 dealer choice. Prior to MVSC entering the California EVR market, the standard
13 length of an EVR provider's contract with a dealer was two years. CVR insisted that
14 dealers agree to two-year contracts in order to make it difficult for those dealers to
15 switch EVR providers. MVSC then entered the market and introduced the month-to-
16 month contract in order to provide more flexibility for dealers. As a result of this
17 innovation, the standard EVR contract in California – including from CVR – is now
18 month-to-month, giving dealers greater flexibility to continually select the EVR
19 provider of their choice.

20
21
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23 **d. CVR Acquired AVRS To Try To Stop Its Market Share**
24 **from Shrinking**

25 84. As a result of the above factors, MVSC slowly increased its market
26 share in California, while CVR saw its market share decrease. In order to stop the
27
28

1 slide, CVR made a major acquisition in 2015. On April 2, 2015, CVR acquired
2 AVRS, Inc. (“AVRS”) for \$49.5 million. At the time, AVRS was a quickly growing
3 EVR provider in California. CVR hoped that the combination of AVRS with CVR’s
4 “seamless end-to-end DMS integration” would reestablish CVR’s monopoly in the
5 California EVR market. The expensive ploy did not work. After the acquisition,
6 AVRS’s service to its dealerships quickly deteriorated to CVR’s inferior levels. As
7 one dealer wrote to CVR in the summer of 2016, referring to AVRS: “I have always
8 stated that your customer services etc. were the most important reason for staying
9 with AVRS over DMV Desk, since your products are so similar. Since the CDK
10 [i.e., CVR] buyout, we have noticed a huge decline in service.”
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14 85. Today, due to its superior product and service, MVSC has been able to
15 earn approximately 50 percent of the EVR market in California. CVR still controls
16 approximately 40 percent of the market, while Dealertrack has the remaining ten
17 percent.
18

19 **4. Other State EVR Markets**

20 86. CVR maintains a monopoly or dominant position in many other state
21 EVR markets, including Michigan, Wisconsin, West Virginia, and South Carolina.
22 MVSC plans to enter other EVR markets, including Wisconsin and Virginia. But so
23 long as CDK and Reynolds deny MVSC access to the dealer data stored in their
24 DMS platforms, it will be very difficult, if not impossible, for MVSC to compete in
25 those markets.
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1 87. Besides California, there is one state in which MVSC has been able to
2 break CVR's stranglehold – Oregon. Until last year, CVR maintained a monopoly in
3 Oregon, controlling virtually 100 percent of the EVR market. Due to CVR's poor
4 service, Oregon sought to introduce competition into its EVR market and license
5 other EVR providers. MVSC applied, and Oregon approved MVSC as an EVR
6 provider in the state. After MVSC entered the market, instead of competing, CVR
7 decided to leave the Oregon market altogether because of the market's small size.
8
9 As a result, MVSC is now the leading EVR provider in the Oregon EVR market.
10

11 **II. It Is Essential that EVR Providers Be Able To Obtain Data from a**
12 **Dealer's DMS**

13 88. In order for an EVR provider to participate in an EVR market, it is
14 necessary that the provider be able to retrieve the following specific information
15 about the sale of a car from the dealer's DMS: (1) identity of the car buyer; (2) car
16 make, model, and VIN; and (3) financing information.
17

18 89. It is impossible to provide EVR services without that information,
19 which must be provided to a state's DMV in order to complete the electronic
20 registration and titling of a car. A dealer's DMS is the only place to obtain this
21 information. Nobody in the industry disputes that being able to retrieve this data
22 from a dealer's DMS is essential, necessary, and required to function as an EVR
23 provider. As CDK describes it, the data on a dealer's DMS is "irreplaceable."
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A. Although Dealers Own the Data Stored on Their DMS, CDK and Reynolds Control Access to the Data

90. The data on a dealer's DMS is not owned by the DMS provider. Rather, the data is owned by the dealers. CDK and Reynolds admit as much. CDK publicly states that it "has always understood that dealerships own their data and enjoy having choices on how best to share and utilize that data with others." Similarly, Reynolds has declared, "The data belongs to the dealers. We all agree on that."

91. Even though dealers own the data, CDK and Reynolds have seized control over who can access it. CDK and Reynolds prohibit dealers from providing data stored on the dealer's DMS to third-party vendors through "unauthorized means" – which CDK and Reynolds interpret to mean any access not specifically approved by them. To provide "unauthorized" access, according to CDK and Reynolds, constitutes a "hostile integration" with the DMS and is a breach by the dealer of the DMS contract. Instead of dealers, therefore, CDK and Reynolds control the flow of data from a dealer's DMS to third-party vendors.

92. CDK and Reynolds charge third-party vendors large fees for accessing data stored on a dealer's DMS. Doing so is a major and growing revenue source for CDK and Reynolds. It is a driving factor behind their large margins and high profitability. The fact that CDK and Reynolds – rather than the dealers themselves – profit from charging third parties for access to the dealers' own data is a prime example of the imbalance of power between the dealers and the DMS providers.

1 Indeed, in nearly every case, the third-party vendors pass the cost of access to dealer
2 data on to the dealers themselves in the form of higher service fees – in effect,
3 dealers have to pay CDK and Reynolds for access to their own data.
4

5 **B. CDK and Reynolds Have Similar Third-Party Programs for**
6 **Accessing Data on Their DMS Platforms**

7 93. CDK and Reynolds provide access to the data on a dealer's DMS
8 through official third-party access programs. CDK's access program is called Third
9 Party Access ("3PA"). Reynolds's is called the Reynolds Certified Interface
10 ("RCI"). These programs supply the only means through which third-party vendors
11 can retrieve – instantaneously and in real time – the data necessary to provide
12 services for the dealership. Participation in these two programs is also the only way
13 that third-party vendors become "certified" to obtain data from a dealer's DMS.
14

15 94. As CDK and Reynolds repeatedly tout to dealers, the 3PA and RCI
16 programs are the "only approved methods for accessing" data on a dealer's DMS.
17 Any other method for accessing data from a dealer's DMS is "unauthorized."
18

19 95. Participation in the 3PA and RCI programs allows a third-party vendor
20 to obtain the needed data from a dealer's DMS, and to do so in real time. For
21 example, when a dealership sells a vehicle, the vendor can immediately retrieve data
22 about that the car buyer, the vehicle, and the financing details.
23

24 96. As for pricing, CDK publicly states that the pricing for participation in
25 the 3PA program is standardized and the same for all vendors. "Our 3PA pricing
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1 philosophy is simple,” CDK states in its program guide, “standardized pricing for all
2 customers.” CDK’s website makes the same point: “Our philosophy is simple:
3 standardized pricing for all our Third Party Access vendors.” But as detailed below,
4 that is not true with respect to MVSC.
5

6 97. CDK has posted a pricing guide on its website that sets forth the
7 standardized charges for accessing specific types of information from the DMS. For
8 the type of information that EVR providers require – buyer, vehicle, and financing
9 data – the standardized pricing is \$49 per dealer per month.
10

11 98. Reynolds’s pricing for participating in the RCI program is much more
12 secretive. According to former Reynolds executives, Reynolds has a pricing
13 committee (chaired by owner Bob Brockman) that determines the rates on a vendor-
14 by-vendor basis. The pricing information is not shared internally at Reynolds – let
15 alone publicly – and even account executives within the RCI program sometimes do
16 not know the rationale for what vendors are charged to participate.
17

18 99. CDK and Reynolds pay lip service to the fact that dealerships “own
19 their data and enjoy having choices on how best to share and utilize that data.” CDK
20 and Reynolds represent that dealers should “choose the vendors with whom [they]
21 want to share data” through the third-party programs. But that is not how it works in
22 reality. Even though California and Illinois dealers want MVSC to participate in the
23 3PA and RCI programs and despite MVSC’s repeated attempts to participate, CDK
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1 and Reynolds have entered into an illegal conspiracy to block MVSC from
2 participating in the programs.

3 **III. CDK, Reynolds, and CVR Have Illegally Agreed To Block MVSC from**
4 **Participating in the 3PA and RCI Programs**

5 **A. The Facts of the Agreement Are Straightforward**

6 100. As of January 2014, CDK and Reynolds had entered into an illegal
7 agreement in which both DMS providers agreed to block MVSC from participating
8 in their third-party access programs. It is likely that the agreement was formed prior
9 to that date, but it was in place at least by January 2014. The agreement continues in
10 effect to this day.
11

12 101. CDK's and Reynolds's identical decisions to block MVSC from their
13 third-party access programs were the function of an agreement between them, not
14 unilateral decisionmaking. CDK and Reynolds – horizontal competitors in the DMS
15 market – coordinated their actions and agreed that they both would reject MVSC
16 from their third-party programs. CDK and Reynolds entered into the illegal
17 agreement with CVR's encouragement.
18

19 102. The agreement was formed and implemented by at least the following
20 individuals: Scott W. Herbers, CVR's longtime General Manager who at the same
21 time served in senior executive positions at CDK; Robert N. Karp, President, CDK
22 North America, and the person with oversight of CDK's 3PA program; and Robert
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1 Schaefer, Director of Data Services at Reynolds and the person in charge of
2 Reynolds's RCI program.

3 103. Scott Herbers is at the nexus of the conspiracy. Not only was he the
4 longtime General Manager of CVR from 2002 until 2015, but he also served as a top
5 executive at CDK during the same period. For example, while running CVR in
6 January 2014, Mr. Herbers was also the CDK Vice President in charge of CDK's
7 western region. Today, Mr. Herbers serves as CDK's Vice President of Sales, North
8 America, while retaining some oversight responsibilities for CVR. Moreover, before
9 taking the helm at CVR, Mr. Herbers was a top executive at Reynolds, serving as
10 Vice President of Sales from 1991 to 2002. Mr. Herbers is therefore at the center of
11 the CDK-Reynolds-CVR triangle.
12

13 104. Mr. Karp (CDK) and Mr. Schaefer (Reynolds) have played pivotal roles
14 in implementing the agreement. MVSC has made repeated attempts to participate in
15 the 3PA and RCI programs. On several occasions, lower-level CDK and Reynolds
16 employees promised (or expressed confidence) that MVSC would be allowed to
17 participate in the programs. But, inevitably, when the idea was run up the corporate
18 ladder, those same employees would come back with news that MVSC's
19 applications had been blocked by senior executives – Mr. Karp at CDK and Mr.
20 Schaefer at Reynolds.
21

22 105. Based on information from a participant in the collusive conversations,
23 CDK even has a name for the illegal conspiracy – the “Closed Category.” EVR is a
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1 “Closed Category” within the third-party programs because they are “closed” to
2 MVSC. Instead, CDK and Reynolds agreed to allow CVR – and only CVR – to
3 participate in the programs in the EVR markets where CVR competes with MVSC.
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5 106. The executives had every opportunity to coordinate and collude, and
6 based on information from participants in those conversations, the executives took
7 full advantage of those opportunities. Mr. Herbers and top executives at CDK and
8 Reynolds sat on CVR’s Board of Directors together. During board meetings, MVSC
9 was a recurring topic of conversation. A former CVR board member confirmed that
10 Reynolds and CDK executives were “very involved” and “very knowledgeable about
11 MVSC and everything CVR was doing.”
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14 107. The purpose of the conspiracy is self-evident: (1) protect CVR’s
15 monopoly in the Illinois EVR market; (2) empower CVR to regain its monopoly
16 position in the California EVR market; and (3) block MVSC from effectively
17 competing with CVR in markets that MVSC may enter in the future. For CDK and
18 Reynolds, CVR has been a cash cow, generating hundreds of millions of dollars
19 during their ownership. The purpose of the conspiracy is to protect the flow of those
20 profits into the coffers of CDK and Reynolds.
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23 108. Removing all doubt as to the existence of the conspiracy, a CDK
24 executive has even confirmed to a senior MVSC executive that CDK has agreed “for
25 a long time” to keep EVR as a “closed category” within the 3PA program to keep
26 MVSC out and to protect CVR. He confirmed that it was Mr. Schaefer at Reynolds
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1 who was over the consideration of MVSC for participation in the RCI program. His
2 purpose in calling was to let MVSC know that there were some lower-level
3 executives within CDK who believed the agreement was wrong. They believed
4 MVSC should be allowed to participate in the third-party programs and therefore
5 compete with CVR on a level-playing field. These CDK executives had argued that
6 participation should be offered to everyone equally and the EVR companies should
7 compete on the quality of the product and service. But he said that Mr. Herbers and
8 Mr. Karp had rejected this argument. He ended the conversation by imploring the
9 MVSC executive to contact a specific executive vice president at CDK – Malcolm
10 W. Thorne, CDK’s Chief Global Strategy Officer – in the hope that he would
11 override Mr. Herbers and Mr. Karp and allow MVSC to participate in the 3PA
12 program. MVSC’s efforts in this regard have been to no avail.

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17 **B. CVR Had Conspiratorial Conversations With CDK and Reynolds**

18 109. CVR was not a bystander to the CDK and Reynolds conspiracy to block
19 MVSC from their respective 3PA and RCI programs. Instead, CVR executives
20 actively participated in conspiratorial conversations with CDK and Reynolds,
21 specifically discussing the need to block MVSC from accessing dealer data (whether
22 through the 3PA and RCI data integration programs or otherwise) so that MVSC
23 could not effectively compete.
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26 110. A long-time member of CVR’s Board of Directors – which is
27 compromised of representatives from CDK, Reynolds, and CVR – admitted to
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1 MVSC that the board specifically discussed keeping MVSC at a disadvantage with
2 respect to data access. Board members recognized that MVSC “outcompeted CVR”
3 with respect to “technology and improved services,” and so board members agreed
4 that CVR needed a competitive advantage as compared to its competitors regarding
5 access to dealer data. CVR board meetings therefore not only provided the
6 opportunity for Defendants to conspire – Defendants in fact seized on that
7 opportunity.
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10 111. The CVR executives who have had these conspiratorial conversations
11 with CDK and Reynolds at board meetings and elsewhere include, but are not
12 limited to, Scott Herbers (former CVR General Manager), Jim Quinlan (current CVR
13 General Manager), and John Roeder (CVR Senior Executive of Sales and
14 Operations).
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17 112. Outside of board meetings, CVR executives worked with CDK to keep
18 its integration program “closed” to MVSC so that CVR could maintain its monopoly
19 in the Illinois EVR market and regain its monopoly in the California EVR market.
20 In an internal CDK presentation regarding its 3PA program, there is a section
21 entitled “Category Restrictions in Place,” with a subsection dedicated to “CVR
22 Competitors.” It reads: “*Not allowed to sign, even with extract, only unless in a*
23 *territory not of value to CVR.*” That is, the presentation confirms that CVR’s
24 competitors are not allowed in the 3PA program at all – even if all they need is
25 simple extract of data, as opposed to write-back capabilities – “only unless” they
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1 operate in an EVR market that is “not of value to CVR.” These rules as described in
2 the internal CDK presentation were implemented and are enforced with the express
3 participation, input, and approval from CVR executives.
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5 113. At times, there have been lower-level executives at both CDK and
6 Reynolds who have urged allowing MVSC into their respective integration
7 programs. But a CDK executive informed MVSC that internal discussions at CDK –
8 discussions in which CVR executives have participated, including those executives
9 identified above – devolve into “how much money CDK would make” in integration
10 fees if MVSC were allowed into the 3PA program versus how much profit
11 Defendants would be “giving up by allowing a competitor” to have access to dealer
12 data through the program. Given the monopoly profits at issue, top CVR and CDK
13 executives have prevailed in continuing to block MVSC as a way to protect and
14 increase CVR’s market positions (including in Illinois and California).
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18 114. Apart from working with CDK and Reynolds to block MVSC from the
19 3PA and RCI data integration programs, CVR also coordinated with CDK and
20 Reynolds with respect to the blocking of independent integrators. For example, Jim
21 Quinlan (CDK’s General Manager) specifically discussed with top CDK executives
22 the blocking of independent integrators as it related to MVSC. As described below,
23 CDK sent letters to MVSC’s dealer customers regarding the blocking of independent
24 integrators and informing dealers that only “certified” vendors such as CVR would
25 have access to dealer data. Mr. Quinlan (of CVR) and Mr. Karp (of CDK)
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1 specifically discussed those letters and hatched plans to capitalize on the expected
2 loss of business that MVSC would suffer. Mr. Quinlan told CVR salespeople that
3 once CDK sent the letters to MVSC's dealer customers, CVR should "target" those
4 dealers and "be prepared" to handle the influx of dealers leaving MVSC for CVR.
5

6 **C. CDK and Reynolds Have Enforced the Agreement**

7 115. CDK and Reynolds have been disciplined in their adherence to their
8 illegal agreement. Every time MVSC has applied to participate in the 3PA and RCI
9 programs, MVSC has been told "No."
10

11 **1. CDK Has Repeatedly Refused To Allow MVSC To** 12 **Participate in the 3PA Program**

13 116. MVSC first applied to participate in CDK's 3PA program in February
14 2014. MVSC made clear that it needed only basic data from a dealership's DMS and
15 that it would pay the standard rates for the data. On March 14, 2014, CDK rejected
16 MVSC's application without explanation, stating: "You have not been approved for
17 inclusion in the [CDK] Third Party Access Program." MVSC asked the CDK
18 representative multiple times for an explanation and received nothing other than the
19 following statement: "The decision was far above my level."
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22 117. Many dealers wrote to CDK to complain. On May 15, 2014, one wrote:
23 "DMVdesk is our chosen [EVR provider] in the State of California for electronically
24 processing the registration and titles for all of our stores. We understand DMVdesk
25 was denied the opportunity to participate in the program without explanation. We
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1 would strongly encourage [CDK] to reconsider this decision and to allow DMVdesk
2 to participate in the program. We have utilized other [EVR providers] and have
3 found DMVdesk to have a superior product and provide us with a higher level of
4 service and support than the other approved [EVR providers].”

6 118. On May 22, 2014, another dealer wrote CDK: “We currently process
7 our DMV work electronically through our service provider, Motor Vehicle Software
8 Corporation (DMVdesk). We are very happy with the product and service that they
9 provide to all of our stores. It has come to my attention that they applied to
10 participate in the [CDK] Third-Party Access Program, but were denied access. The
11 fact that [CDK] and Motor Vehicle Software Corporation share a common client
12 should encourage you to embrace a business relationship that will ultimately serve
13 us, your end user. We strongly encourage [CDK] to reconsider this decision and to
14 allow MVSC to participate in the program. We have used other Service Providers in
15 the past and have found that DMVdesk exceeds our expectations. If they can bring
16 additional value to us through the [CDK] Third-Party Access Program, then we
17 would like to see it happen.”

22 119. On July 11, 2014, another dealer wrote CDK regarding its decision to
23 block MVSC: “I am writing to encourage [CDK] to reconsider this decision and to
24 allow DMVdesk to participate in the program as I believe competition in the market
25 place is always good. When compared to the other [EVR providers] we have used in
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1 the past, we have found DMVdesk to best meet [our] needs, while providing us with
2 a high level of service and support.”

3 120. In July 2014, after being prompted by multiple dealerships, MVSC
4 again applied to participate in CDK’s 3PA program. Citing the letters the
5 dealerships had sent to CDK, MVSC wrote that it was “hopeful that after considering
6 the desires of your customers and the value of having DMVdesk as part of the
7 program that CDK will approve this application.” MVSC also noted the
8 “meaningful financial value to CDK in approving DMVdesk as a vendor,” given that
9 MVSC would pay the standardized rates for the data on the DMS. Finally, MVSC
10 noted that allowing MVSC to participate would support CDK’s statement to dealers
11 that “[d]ealerships own their data and should have choices on how best to share it
12 and use it. Our Third-Party Access Program lets you [the dealerships] choose the
13 vendors with whom you want to share data, by providing participating third parties
14 with secure application programming interfaces.”

15 121. The CDK representative that processed MVSC’s application wrote that
16 a “first, smaller committee agreed” to allow MVSC into the 3PA program, but that
17 he had to send the application “up the chain.” Once in the hands of Mr. Herbers and
18 Mr. Karp, MVSC’s application had no chance. They overruled the committee’s
19 decision and again rejected MVSC’s application. This time, however, MVSC
20 received an explanation for the rejection: CDK stated that MVSC was a competitor
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1 to CVR, and it was therefore unlikely that MVSC would ever be allowed to
2 participate in the program.

3 122. In March 2015, MVSC again applied to the 3PA program. MVSC
4 emphasized that it would pay the posted standardized rates for participation. After
5 MVSC applied and asked for a status update, a CDK representative responded that
6 MVSC's application was "sitting at the highest level of governance that we have" –
7 meaning, with Mr. Karp and Mr. Herbers. This time, instead of a flat rejection as
8 with the two prior attempts, CDK demanded 33 percent of MVSC's top-line revenue
9 to participate, an extortive demand that would make it impossible for MVSC to
10 operate as a profitable business. CDK knew that MVSC could not charge
11 dealerships more in order to cover the exorbitant demand. CDK knew that MVSC
12 would lose money on every CDK dealership that it served, would cease to be able to
13 operate as a going concern, and could never accept the proposal. MVSC made these
14 points to CDK, and referred CDK to its public statements that "[o]ur 3PA program
15 pricing philosophy is simple: standardized pricing for all customers." MVSC again
16 stressed that it required only basic information from a dealer's DMS – among the
17 cheapest information to obtain based on CDK's standardized pricing sheet. CDK
18 responded that no matter what it had said publicly, privately MVSC was different
19 because it competed with CVR and so would have to pay the exorbitant rate. CDK
20 knew that no business could pay 33 percent of its top-line revenue to obtain the basic
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1 (but necessary) data from the DMS. The requested percentage was an effective
2 refusal to deal, and CDK knew it.

3 123. In May 2016 – again at the behest of various dealerships – MVSC tried
4 yet again to participate in the 3PA program. On May 2, 2016, MVSC spoke with
5 Dan McCray, Vice President of Product Management at CDK. Mr. McCray stated
6 that vendors “should be able to integrate with the DMS even if they have products
7 that compete with companies owned by CDK.” Mr. McCray also said that the
8 standardized pricing posted on the 3PA website is what MVSC would pay if it
9 wanted to participate. MVSC stated that it had always been willing to pay the posted
10 rates. Therefore, with the apparent change of heart from CDK, MVSC applied the
11 very next day to participate in the 3PA program. After a week had passed, MVSC
12 contacted Mr. McCray for a status update. On May 12, 2016, Mr. McCray
13 responded: “I learned a lot since the last time we talked. I see this is not going to be
14 [an] easy decision.” Mr. Herbers and Mr. Karp had intervened. Indeed, Mr. McCray
15 stated that CDK had “elevated your 3PA integration discussions.” Then, as it had
16 before, CDK quoted MVSC a similarly offensive percentage of MVSC’s top-line
17 revenue as the price of participation – this time 25 percent of MVSC’s gross
18 revenues. And as before, MVSC explained to CDK that the quoted price was an
19 effective refusal to deal, as MVSC could not raise its rates to cover the huge fee.
20 MVSC would still lose money on every CDK dealership. To break even, MVSC
21 would have to lay off over half of its staff; cease all research and development
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1 efforts; and end multiple partnerships with car dealer associations. Even then, such
2 cuts would most likely not be enough. CDK understood that, and once again, it
3 knew that the quoted price was an effective refusal to deal.
4

5 124. In September 2016, MVSC applied again to participate. This time,
6 MVSC attached with its application CDK's "standardized" price list for all vendors
7 in the 3PA program. On September 13, 2016, CDK responded that the publicized
8 pricing did not apply to MVSC, and that there would be "no change to the pricing"
9 that CDK had presented previously. For MVSC, "the integration pricing is still 25
10 percent of the revenue generated." CDK openly admitted that MVSC's pricing was
11 so high because CDK and Reynolds "have a competing product in the market" –
12 namely, CVR.
13
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15 125. With CDK's refusal to deal causing continued disruptions, dealerships
16 again encouraged MVSC to apply to the 3PA program. And so on October 21, 2016,
17 MVSC wrote to CDK: "We have tried numerous times [to participate in the 3PA
18 program] and we have been told we can't participate and were quoted a price that far
19 exceeds that which is published on the website and [which is] economically
20 unfeasible." CDK offered no substantive response.
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22

23 **2. Reynolds Has Repeatedly Refused to Allow MVSC to**
24 **Participate in the RCI Program**

25 126. MVSC first applied to participate in Reynolds's RCI program in early
26 2014. In response, Reynolds refused to provide a price quote until MVSC provided
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1 detailed information about MVSC's business. Reynolds's aim was to extract as
2 much proprietary information from MVSC as possible before providing firm pricing.
3 Such information included details regarding MVSC's future business plans in
4 California and Illinois, as well as technical information on how MVSC internally
5 used and processed the data pulled from the DMS. Finally, in February 2014,
6 Reynolds came back with a price quote that translated into a huge percentage of
7 MVSC's top-line revenues, similar to CDK's demand. If paid, the cost of accessing
8 the DMS would require MVSC to operate at steep losses, which would therefore
9 make the business no longer viable. Like CDK, Reynolds knew that the quoted price
10 was an effective refusal to deal.
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14 127. At the urging of several dealerships, MVSC applied again in August
15 2014. This time, Reynolds provided a quote that was actually higher than the one
16 provided in February. Reynolds stated that a senior-level "pricing committee" had
17 mandated that MVSC be quoted the even higher rate. The rate was exorbitant, and
18 MVSC informed Reynolds that the proposed pricing would effectively eliminate
19 MVSC's ability to serve dealerships that use the Reynolds DMS. Moreover, MVSC
20 explained that the data it required from the DMS was basic information that in no
21 way justified the inflated rate. "To be clear," MVSC wrote to Reynolds, "our desire
22 is to participate in the RCI program, but financially it is impossible for us."
23
24 Reynolds responded that the quoted rate would not change and therefore terminated
25 the discussions regarding MVSC becoming RCI certified.
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1 128. In 2016, while at an industry conference, an MVSC executive
2 complained to a CVR executive about how absurd the quoted rates were. In
3 response, the CVR executive confirmed that the quotes were not serious and were
4 simply designed as an effective refusal to deal. The CVR executive stated: “*I wish*
5 *we would have asked for 85 percent of your revenue. We don’t want you in the*
6 *program.*”
7

8
9 **D. There is Clear Evidence of the Agreement in the Marketplace**

10 129. The illegal conspiracy reveals itself in obvious ways in the various state
11 EVR markets. For example, MVSC and CVR do not compete in the Oregon EVR
12 market. And yet, CDK and Reynolds still do not allow MVSC to participate in their
13 third-party programs, even within the limited Oregon market.
14

15 130. Standing in stark contrast is the Texas EVR market, where neither CVR
16 nor MVSC operates due to Texas’s byzantine regulation of EVR services at the
17 county (rather than the state) level. In Texas, CDK and Reynolds both allow the
18 local EVR provider (AIB, Inc.) to participate in their third-party programs. AIB
19 operates only in Texas and poses no competitive threat to CVR. Compare that with
20 Oregon, where MVSC is the local EVR provider: CDK and Reynolds both bar
21 MVSC from participating. CDK and Reynolds therefore treat AIB (a non-
22 competitor to CVR) one way, and MVSC (the chief competitor to CVR in
23 California) another way. As these on-the-ground facts demonstrate, CDK and
24 Reynolds are targeting MVSC.
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1 131. The California and Illinois EVR markets remove all doubt. Those are
2 the markets where MVSC and CVR compete head-to-head. In those states, CVR is
3 the *only* EVR provider allowed to participate in the 3PA and RCI programs.
4
5 Therefore, in those markets where CVR competes with MVSC, CDK and Reynolds
6 give CVR special protection by refusing to allow competing providers to participate.

7 132. Finally, other DMS providers – the ones that do not own CVR – allow
8 MVSC to participate in their third-party programs. These DMS providers – although
9 minor and comprising a small percentage of the dealership market – include
10 Dealertrack and Advent. It is only CDK and Reynolds – the owners of CVR and the
11 two dominant DMS providers – that refuse to allow MVSC to participate.
12

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14 **E. CDK and Reynolds Have Conspired With Respect to Access to**
15 **Dealer Data In Other Ways**

16 133. CDK and Reynolds have not only agreed to block MVSC from
17 participating in their 3PA and RCI programs, but they have conspired to control
18 access to dealer data generally. Specifically, CDK and Reynolds have illegally agreed
19 to eliminate competition in the market for access to dealer data. In furtherance of
20 that conspiracy, they agreed (1) to no longer compete with each other in that market,
21 and (2) to block competitors for data integration from accessing dealer data on their
22 respective DMS platforms. The result is that for vendors like MVSC, there are no
23 options for obtaining dealer data except from CDK and Reynolds.
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1 **1. CDK and Reynolds Entered into a Per Se Illegal Written**
2 **Agreement Dividing the Dealer Data Integration Market**

3 134. For many years, CDK and Reynolds competed in the market data
4 integration – i.e., the market for providing dealer data to application providers. For
5 over a decade, CDK had provided data integration services for dealers using the
6 Reynolds DMS, competing directly with Reynolds’ own RCI integration product.
7 Effective February 18, 2015, however, CDK and Reynolds entered into a written
8 agreement categorized as a “Wind Down Access Agreement” whereby Defendants
9 agreed that they would no longer compete in the Dealer Data Integration Market. It
10 is a classic case of illegal market division: CDK agreed that it would no longer
11 compete in providing access to dealer data on the Reynolds DMS, ceding that ground
12 exclusively to Reynolds. Moreover, because Reynolds already did not compete with
13 CDK in providing access to data for dealers using the CDK DMS, the agreement
14 ensured that CDK and Reynolds would be the exclusive providers of data integration
15 services for dealer data on their respective DMS platforms.
16

17 135. More than that, the agreement mandated coordination between the
18 erstwhile competitors in transitioning all of CDK’s vendor clients (i.e., those vendors
19 for whom CDK provided access to dealer data on the Reynolds DMS) into the
20 Reynolds RCI program. In short, the written agreement is direct and irrefutable
21 evidence of CDK’s and Reynolds’s collusion to eliminate competition for data
22 integration, and therefore be the sole providers of data integration services for
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1 dealers using their respective DMS platforms. This leaves vendors like MVSC with
2 no choice but to obtain data from CDK and Reynolds – except, of course, CDK and
3 Reynolds have agreed not to allow MVSC into their data access programs.

4
5 **a. The Agreement Contains Specific Provisions Dividing**
6 **the Dealer Data Integration Market**

7 136. The agreement’s key provision provides that CDK agreed to no longer
8 integrate or access any Reynolds DMS. Section 4.1. In short, CDK agreed to no
9 longer provide any data service that involves pulling data from a Reynolds DMS for
10 use by any application provider. *Id.*

11
12 137. The agreement granted CDK a “Wind Down Period” of one year to stop
13 pulling dealer data stored on the Reynolds DMS. During the wind-down period,
14 Reynolds agreed that CDK could continue to pull dealer data just as it had before.

15
16 **b. The Agreement Required Coordination in**
17 **Transitioning Vendor Clients from CDK to Reynolds**

18 138. Because CDK agreed that it would no longer provide vendors with data
19 from dealers using the Reynolds DMS, CDK and Reynolds agreed that they would
20 work together to transition those vendors into the Reynold RCI program.
21 Specifically, the agreement mandated that CDK cooperate with Reynolds’ efforts to
22 convince vendors to join the RCI program. Sections 3.1 and 3.4.

23
24 139. It is one thing for competitors to agree not to compete and divide the
25 market. It is yet another for those same competitors to agree to coordinate in
26 transitioning customers to each other. It also lays bare a primary purpose behind the
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1 agreement: prevent vendors from using competing data integrators and force them to
2 become members of the RCI and 3PA programs.

3 140. In connection with coordinating the transition of vendors from CDK's
4 data pulling services into the RCI program, the wind down agreement required CDK
5 to give Reynolds full information about the vendors CDK served, including their
6 name, contact information, contract terms, data pulling requirements, usernames
7 used to pull the data, and more. Absent collusion, this type of highly confidential
8 customer information would be treated as a trade secret carefully protected from the
9 prying eyes of competitors.
10

11 141. As the agreement mandated, after the wind-down period, CDK stopped
12 serving Reynolds DMS dealers as a data integrator. Also as mandated by the
13 agreement, CDK and Reynolds coordinated the transition of vendors from CDK to
14 Reynolds. On March 2, 2015, CDK sent a letter to its vendor clients – i.e., the ones
15 for whom CDK had pulled data from the Reynolds DMS – announcing that the
16 vendors “will be provided with a roadmap to transition to the Reynolds Certified
17 Interface (RCI) program without any further risk of interruption to existing services.”
18 A few weeks later, CDK delivered that promised roadmap, and made the sales pitch
19 for RCI participation: “We are pleased to be working with R&R to bring you this
20 streamlined, supported process for handling dealership data for your R&R dealers.”
21 In relation to CDK's agreement not to compete, the letter stated that if the vendor
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1 was “not RCI Certified, it will be more difficult to reliably receive dealership data
2 since DMI is no longer extracting data directly from Reynolds systems.”

3 142. The agreement had its intended effect: vendors were forced from CDK’s
4 data integration services into the Reynolds RCI program.
5

6 **1. CDK and Reynolds Have Agreed to Block Independent Data**
7 **Integrators from Accessing Dealer Data**

8 143. Having agreed to no longer compete with each other for data
9 integration, CDK and Reynolds needed to get rid of the remaining competition. To
10 that end, they agreed to block independent data integrators from accessing dealer
11 data, and thereby destroy the competition.
12

13 144. Senior CDK and Reynolds executives – including those who formed
14 and implemented the agreement with respect to MVSC – have admitted that CDK
15 and Reynolds have entered into an agreement to restrict access to dealer data on their
16 systems and to destroy data integrators.
17

18 145. Specifically, on April 3, 2016, at an industry convention, Dan McCray
19 (CDK’s Vice President of Product Management) approached Steve Cottrell, the
20 owner of Authenticom—one of the leading data integration firms—and said that they
21 should “take a walk.” Mr. McCray led Mr. Cottrell off the convention floor and
22 down a service ramp to a secluded area. Mr. McCray then confirmed the existence
23 of the illegal agreement, stating that CDK and Reynolds had “agreed to only source
24 data from each other and effectively lock you and the other third parties out.” In
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1 reference to a prior offer by CDK to acquire Authenticom's business for \$15 million,
2 Mr. McCray confirmed the illegal agreement again, stating that the number was so
3 low because Authenticom's "book of Reynolds business is worthless to us because
4 of the agreement between CDK and Reynolds." Mr. McCray then grew threatening:
5 "I wanted to look you in the eye and let you know man to man, I have been
6 mandated by our new CEO to seek you out and destroy your business on our
7 systems." "For god's sake," he concluded, "you have built a great little business, get
8 something for it before it is destroyed otherwise *I will f***ing destroy it.*"

11 146. Top Reynolds executives have delivered the same message. In May
12 2015, Mr. Schaefer told Mr. Cottrell during a phone conversation that CDK and
13 Reynolds had an agreement to support each other's 3PA and RCI programs and
14 therefore block competitors like Authenticom from pulling dealer data. Mr.
15 Brockman was adamant, Mr. Schaefer said, that all intermediary data integrators
16 must be cut off.

19 147. CDK and Reynolds even have employees actively working together to
20 coordinate the technical aspects of that blocking of independent data integrators such
21 as Authenticom. In December 2016, during one particular vendor's discussions with
22 CDK about joining the 3PA program and leaving Authenticom, Steve French –
23 CDK's senior director of client and data services – told the vendor that a large
24 portion of his job was to work with Reynolds to ensure third-party data integrators
25 like Authenticom remain locked out. Mr. French suggested that resistance to getting
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1 dealer data from CDK and Reynolds was futile as they were working together to lock
2 out third party data integrators like Authenticom.

3 * * * * *

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5 148. The bottom line is that CDK and Reynolds have conspired in many
6 ways to control access to dealer data. Their agreement to eliminate competition in
7 the data integration market has directly affected MVSC because it means that MVSC
8 has no alternatives to obtain dealer data except from CDK and Reynolds. And the
9 fact that Defendants have conspired so explicitly to control access to dealer data
10 generally only makes their conspiracy with respect to MVSC specifically all the
11 more egregious and damaging.
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14 **IV. CVR Is Maintaining Its Monopoly Position in the Illinois EVR Market**

15 149. Because CDK and Reynolds refuse to allow MVSC to participate in
16 their third-party programs, MVSC is unable to compete with CVR in the Illinois
17 EVR market. Participation in the third-party programs with instantaneous access to a
18 dealer's DMS is a pre-requisite to competing in Illinois. Without it, an EVR
19 provider cannot obtain the necessary information in real time in order to process the
20 registration and tags for the car buyer at the point of sale. CVR – as the only EVR
21 provider in Illinois allowed to participate in the 3PA and RCI programs – is therefore
22 guaranteed to maintain its monopoly position with over 95 percent of the market.
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1 150. EVR providers other than MVSC are likewise unable to break CVR's
2 monopoly in Illinois. For example, although Dealertrack has operated in Illinois for
3 many years, it has not been able to compete with CVR.
4

5 151. If MVSC was allowed to participate in the 3PA and RCI programs, and
6 therefore have real-time access to dealer data, then MVSC would be able to compete
7 against CVR in the Illinois EVR market. And if MVSC was allowed to compete
8 against CVR, then CVR's monopoly would no longer be secure.
9

10 152. CDK and Reynolds are liable for CVR's monopolization of the Illinois
11 EVR market because they control the management and decisionmaking of CVR.
12 Moreover, the only reason CVR is able to maintain its monopoly in Illinois is
13 because CDK and Reynolds have blocked MVSC and other EVR providers from
14 participating in the 3PA and RCI programs.
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17 153. Indeed, for purposes of MVSC's monopolization and attempted
18 monopolization Section 2 claims, CDK and CVR are considered a single-entity
19 based on the facts outlined in paragraphs 56 through 60 above. In such
20 circumstances, CDK is considered a competitor through CVR in the relevant EVR
21 markets for purposes of the monopolization of the Illinois EVR market and
22 attempted monopolization of the California EVR market. In coordinating their
23 conduct to achieve CVR's monopoly and attempted monopoly, CDK and CVR's
24 conduct is treated as the unitary conduct of the single enterprise they form. The facts
25 alleged here are a perfect illustration of why a joint venture and its controlling parent
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1 are subject to single enterprise liability for monopolization claims. Otherwise,
2 sophisticated competitors like CDK and Reynolds could simply spread their
3 anticompetitive scheme over multiple entities, such that no one entity met all the
4 requirements for unlawful monopolization.
5

6 154. And as described above, while substantial control is all that is required
7 for a parent to be considered a competitor as a single-entity with its subsidiary for
8 purposes of monopolization claims, the facts alleged here demonstrate that CDK
9 directly controls the day-to-day activities of CVR, making CVR the alter-ego or
10 agent of CDK.
11
12

13 **V. CVR Is Attempting To Monopolize the California EVR Market, and**
14 **There Is a Dangerous Probability that It Will Succeed**

15 155. CVR once had a monopoly in the California EVR market, controlling
16 virtually the entire market. But due to MVSC's dedication to quality product and
17 services, MVSC has been able to make inroads into MVSC's dominant market
18 position.
19

20 156. CVR, CDK, and Reynolds are attempting to regain CVR's monopoly
21 position in California through a multi-front campaign. First, CVR is leveraging its
22 position as the only "certified" EVR provider in the state, making good on the
23 purpose behind CDK's and Reynolds's group boycott of MVSC. Second, CDK and
24 Reynolds are cutting off MVSC's alternative paths to obtain the necessary data from
25 dealerships' DMS. This, more than anything, risks reinstating CVR's monopoly.
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1 And finally, CDK and Reynolds are contacting MVSC's dealerships directly, using
2 all the leverage they possess to coerce dealerships to switch to CVR. Despite their
3 preference for MVSC, many dealers are in fact making the switch in the face of
4 Defendants' actions. As a result, there is a dangerous probability that CVR will
5 succeed in regaining its monopoly position.
6

7 **A. CVR Is Leveraging Its Position as the Only EVR Provider To**
8 **Convince Dealerships To Switch from MVSC**

9 157. In California (as elsewhere), CVR has leveraged its position as the only
10 EVR provider allowed to participate in the 3PA and RCI programs. CDK and
11 Reynolds worked in concert with CVR to capitalize on its exclusive status as the
12 only "certified" EVR provider.
13

14 158. CVR has aggressively sought to use its exclusive DMS access to its
15 advantage. In one typical correspondence, CVR wrote to MVSC's dealers that "it's
16 critical your dealership is utilizing a 'certified' service provider for computerized
17 vehicle registration. Utilizing an uncertified service provider is exposing your DMS
18 customer data to unnecessary risk and liability. For a limited time, CVR, *the*
19 *industry's only 'certified' service provider*, is offering special incentives to *drop*
20 *your uncertified service provider* and instantly switch to CVR. Be prepared, be safe,
21 switch to CVR!" (emphasis added).
22
23
24

25 159. This email from CVR was immediately followed by an email from
26 CDK, which specifically targeted MVSC's product as not being certified. "Your
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28

1 current DMV vendor ‘DMV Desk’ is not certified – please see the message below
2 from our CVR representative about the risks from that. It’s possible to have [CVR]
3 call you and in 10 minutes [we’ll] get you switched over to CVR’s ‘certified’ system.
4 . . . It just makes no sense to entrust the security of your DMS data to an uncertified
5 service provider.”

6
7 160. After CDK sent its email, CVR sent yet another email to MVSC’s
8 dealerships, writing: “*We are simply stating the fact that CVR is the industry’s only*
9 *service provider that has ‘certified integration’ with your [CDK] DMS.* That means
10 CVR pulls data securely and directly from your [CDK] DMS, as opposed to all our
11 competitors, including DMV Desk, *which access your [CDK] DMS via a hostile*
12 *interface.*” (emphasis added).

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15 161. While some dealers saw through CDK’s actions for what they were –
16 scare tactics – many other dealers switched.

17
18 **B. CDK and Reynolds Are Seeking To Completely Cut Off MVSC’s**
19 **Access to the Necessary Data on a Dealer’s DMS**

20 162. CVR’s ability to market itself as the only “certified” EVR provider in
21 California is an obvious advantage. But even worse, CDK and Reynolds are now
22 engaged in a crusade to eliminate MVSC’s last remaining ways to obtain the
23 necessary data for a dealer’s DMV. CDK and Reynolds have agreed to block MVSC
24 from accessing the data by any means, whether through the third-party programs or
25 otherwise.
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1 163. Because CDK and Reynolds can utilize their power in the DMS market
2 to prosecute their crusade to eliminate any avenue for MVSC to obtain the necessary
3 data, there is a dangerous probability that CVR will illegally regain its monopoly
4 position in the California EVR market.
5

6 **1. CDK and Reynolds Have Cut Off MVSC's Ability To Obtain**
7 **the Necessary Data from a Dealer's DMS Through**
8 **Intermediaries**

9 164. At one time, MVSC was able to obtain the required data from a dealer's
10 DMS through intermediaries – i.e., independent data integration companies. The
11 integrators helped dealers manage the data flow for the many third-party vendors that
12 required access to information from the dealer's DMS in order to provide important
13 services. The vendors, such as MVSC, would pay the integrators a fee to access the
14 required data from the dealer's DMS. CDK and Reynolds tolerated this situation for
15 a time. But in an effort to increase revenues, and despite loud protests from dealers,
16 CDK and Reynolds have engaged in a campaign to destroy their competitors in the
17 integration market and cut off intermediary access to their DMS platforms. *See*
18 *supra* ¶¶ 133–148. In that way, they are forcing third-party vendors to participate in
19 their 3PA and RCI programs. But, as described herein, CDK and Reynolds do not
20 allow MVSC to participate in the third-party programs. They have therefore
21 eliminated the most viable remaining path for MVSC to obtain the required data
22 from a dealer's DMS.
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a. Reynolds Eliminated Intermediary Access

165. Reynolds was the first to cut off MVSC's access through intermediaries. Until 2014, MVSC was able to obtain data from the Reynolds DMS through Authenticom. But Reynolds cut off that route. As one large dealership explained to MVSC, "Reynolds was seeking to 'choke' all 3rd party efforts to integrate directly with Reynolds to extract data. I have watched several 3rd parties literally be choked until they die and the companies are no more. Authenticom is exactly the type of company Reynolds is trying to choke off." Reynolds succeeded in cutting off MVSC's access to a dealer's DMS through Authenticom or any other data integrator, and therefore eliminated MVSC's ability to obtain the necessary data through intermediaries.

b. CDK Eliminated Intermediary Access

166. With respect to CDK, MVSC was once able to access the CDK DMS through three data integrators – Authenticom, ProQuotes, Inc., and Superior Integrated Solutions, Inc. ("SIS"). But like Reynolds, CDK has systematically cut off that pathway.

167. CDK first cut off Authenticom. In August 2016, Authenticom notified dealers that its access to the CDK DMS was being "disabled by CDK thus prohibiting our ability to extract data for your solution providers. This functionality is similar to the lockouts you may have heard about that we experienced with Reynolds & Reynolds in the past." Dealers immediately contacted MVSC to express

1 their anger at CDK, complaining that their EVR service was being interrupted and
2 they could not process the required information. For example, one large dealer
3 wrote: “Shut down again! What the heck happened, thought you were going to
4 access using [Authenticom]? Please advise ASAP!” When investigating the reason
5 for the shutdown, the dealership discovered that CDK was preventing the data from
6 being transferred to MVSC.
7

8
9 168. In the fall of 2016, CDK also cut off MVSC’s access through
10 ProQuotes. As one dealer explained, “DMVDesk accesses through ProQuotes at this
11 time and that access will cease soon, as CDK will not allow them into our [DMS].”
12 At the time of CDK’s actions, MVSC served over 100 dealerships that were
13 impacted by the termination of access through ProQuotes.
14

15 169. Finally, CDK cut off MVSC’s access through SIS. On August 30,
16 2016, SIS informed MVSC by letter that it “must terminate” its “integration
17 offerings” with the CDK DMS. “SIS will terminate the portion of the current
18 Agreement with [MVSC] that pertains to providing integration services with the
19 CDK DMS, effective January 1, 2017.” CDK coerced SIS to take this drastic step.
20 At the time of the letter, MVSC served 127 California dealerships that would be
21 impacted by the termination.
22

23 170. Next, CDK sent a follow-up letter directly to MVSC’s dealers on
24 November 15, 2016. The letter begins, “We are writing to inform you that Superior
25 Integration Solutions (SIS) will no longer, as of December 31, 2016, provide
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DMVdesk with integration to the CDK DMS.” The letter then contains the following falsehood: “CDK attempted to reach agreement with DMVdesk to have its product integrated through CDK’s Third Party Access program – the only CDK approved method of third party integration. However, DMVdesk recently informed us that they have declined to participate in the Third Party Access program.” CDK knew this statement was untrue. As detailed above, it was CDK that had rejected MVSC’s multiple attempts to participate. Nonetheless, CDK deceived MVSC’s dealerships, misrepresenting that it was MVSC’s choice not to participate.

171. A CDK executive specifically warned MVSC that CDK was not “bluffing” and that CDK would “turn off” MVSC’s access to the SIS dealerships.

2. CDK and Reynolds Are Trying To Eliminate MVSC’s Only Remaining Route for Obtaining Data from a Dealer’s DMS

172. With CDK and Reynolds having blocked MVSC from their third-party programs and then having cut off any intermediary access, MVSC has one last option for obtaining data from a dealer’s DMS: a manual process that requires the dealer to pull the data every day. On a daily basis, the dealer runs a script that creates a report containing the required data to process EVR transactions. The report is placed in a folder on the dealership’s local hard drive. The report is then encrypted and transferred to MVSC using the highest security standards. Once transferred, the report is automatically deleted from the dealership’s hard drive.

1 173. Because of MVSC's preferable product and service, many dealers are
2 willing to complete the manual steps to retrieve the necessary data from their DMS.
3 But CDK and Reynolds have conspired to put a stop to this, too.
4

5 174. First, for some dealers, CDK and Reynolds are disabling the script so
6 that the dealer cannot create the report with the dealer data.
7

8 175. Second, and even more important, CDK and Reynolds are using the
9 most powerful weapon in their arsenal: the DMS contract. CDK and Reynolds are
10 threatening dealers by telling them that they are in breach of their DMS agreement
11 by using the manual process to retrieve data from the DMS. Given the importance of
12 the DMS to the functioning of a dealer's business, and the disruption that CDK and
13 Reynolds can cause if they pursue a claim of breach, it is hard to overstate the impact
14 that such threats have on dealers.
15
16

17 176. Moreover, this is not the first time CDK and Reynolds have used the
18 DMS contract as a weapon to threaten MVSC's dealers. Throughout the past year,
19 CDK and Reynolds have repeatedly threatened MVSC's dealers that they are in
20 breach of their DMS contract by providing data to MVSC through any means other
21 than through the 3PA and RCI programs (from which MVSC is blocked). It is a
22 trump card that CDK and Reynolds repeatedly use to intimidate dealers in order to
23 block MVSC from gaining the data required to provide EVR services.
24
25

26 177. CDK and Reynolds have threatened dealers directly. Dealerships have
27 reported that CDK and Reynolds representatives have visited their stores and called
28

1 on the phone to warn them that by using the manual process for MVSC, the
2 dealerships have created a “hostile integration” and are therefore in breach of the
3 DMS contract. Notwithstanding that any such claim of breach is baseless, and that it
4 is undisputed that the dealers own the data stored on the DMS, the dealers have no
5 choice but to take the threat seriously.

7 178. CDK and Reynolds have also threatened dealers indirectly, warning
8 them that any “unauthorized” access to the DMS (i.e., any access other than through
9 the 3PA and RCI programs) must be eliminated by the end of 2016. For example,
10 CDK is sending emails to dealers with “non-authorized activity reports” that detail
11 when data is retrieved from a dealer’s DMS through an avenue other than the 3PA
12 program. Dealers are contacting MVSC when they receive these reports. One dealer
13 wrote in typical fashion: “[We] received another notice from CDK today that we are
14 allowing unauthorized access to our data to an unapproved vendor.”

18 179. Mr. Karp (CDK) – the co-conspirator with Mr. Schaefer (Reynolds) and
19 Mr. Herbers (CVR) – has even contacted dealers directly. On August 22, 2016, Mr.
20 Karp sent a letter to California dealers served by MVSC with the following message:
21 “We are contacting you because your dealership has been identified as a client of a
22 third party that is accessing your data through CDK systems by unauthorized
23 means.” He stated that “[o]ur goal is to complete the removal” of “unauthorized
24 third-party access methods by December 31, 2016.” Mr. Karp then wrote: “Vendors
25 that wish to continue accessing dealer data should therefore begin the Third Party
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1 Access program application process immediately to avoid disruption.” This
2 statement is a farce: CDK refuses to allow MVSC participate in its 3PA program.
3 Mr. Karp ended his letter with a final threat to the dealers: “In January, CDK will
4 further increase our security actions to prevent the use of unapproved data access
5 methods.” Beyond what CDK is already doing, therefore, CDK has threatened to
6 tighten the vise even further in 2017.
7

8
9 **C. CDK and Reynolds Are Contacting Dealerships Served by MVSC**
10 **To Pressure Them into Switching to CVR**

11 180. In conjunction with their efforts to completely cut off MVSC’s access to
12 the necessary dealer data, CDK and Reynolds have contacted California dealers to
13 convince them to switch to CVR. The pattern is now familiar: cut off MVSC, and
14 then push dealers to switch to CVR. And as part of that push, CDK and Reynolds
15 have spread disinformation and falsehoods about MVSC.
16

17 181. For example, throughout October 2016, CDK called dealerships served
18 by MVSC and told them that CDK would be “turning off MVSC at the end of the
19 year because MVSC has refused to participate in the 3PA program.” The truth was
20 the opposite: CDK denied access to MVSC. The CFO of another large dealership
21 called MVSC to say that “an executive regional sales manager from CDK personally
22 called me to say that DMVdesk has not renewed an agreement with CDK” – another
23 falsehood – “and that they will no longer support the DMVdesk connection to
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1 CDK.” The CDK salesperson also informed the dealership that he had contacted
2 “about ten other CFOs from other large dealer groups to inform them” of the same.

3 182. A typical example of CDK’s strongarm tactics involved a dealership
4 from the Los Angeles area. CDK had cut off MVSC’s ability to retrieve data from
5 the dealer’s DMS. The dealer called CDK. CDK responded that MVSC was not
6 authorized to obtain data from the DMS system and that the dealer should switch to
7 CVR “to avoid this issue.” In another representative example, a Sacramento dealer
8 reported to MVSC that she had “received a call from her CDK rep this morning
9 [who] said that she would no longer be able to use DMVDesk after November 30th.”
10 The CDK representative had informed the dealer that MVSC “would no longer be
11 compliant” and that the dealer should therefore switch to CVR.
12

13 183. Dealerships confirmed that CDK and Reynolds are using the same
14 tactics. “Am a little surprised that CDK is beginning to sound like Reynolds,” one
15 dealer wrote to MVSC. “CDK has been in here telling me they want us to convert.”
16

17 184. On or around October 25, 2016, CDK sales representatives had a
18 meeting in Denver, Colorado, where they were further instructed about the campaign
19 to cut off MVSC and convert dealerships to CVR. In fact, while the CDK sales
20 representatives were at the company meeting, they called dealers served by MVSC to
21 reiterate that MVSC would be cut off. These sales representatives repeated – yet
22 again – the false claim that MVSC had refused to participate in the 3PA program.
23 The sales representatives emphasized that the dealers needed to switch to CVR,
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1 which they stressed was the only EVR provider with direct access to data on the
2 DMS. They told dealers that they knew how MVSC was obtaining the data –
3 through the manual workaround – and that CDK was going to find a way to shut off
4 that pathway (which, as noted above, included threatening the dealers with breach of
5 the DMS contract). On one of those phone calls, a CDK salesperson confirmed
6 (after being asked by the dealer) that CDK sales personnel were gathered together in
7 Denver and that the campaign against MVSC on behalf of CVR was a key part of
8 their meeting’s agenda.
9

11 **D. Dealers Have Responded to CDK’s and Reynolds’s Tactics in**
12 **Various Ways, Including by Switching to CVR**

13 185. Unfortunately, for many dealers, the campaign by CDK and Reynolds to
14 cut off MVSC and then convert dealerships to CVR has had its intended effect.
15 Inevitably, after CDK or Reynolds sent a letter or contacted a group of dealers,
16 MVSC would receive a flood of calls and emails from concerned dealers, with many
17 making the decision to switch to CVR.
18

19 186. “I have really bad news,” one dealer wrote. “We are not going to be
20 able to keep DMVDesk since CDK is only approving CDK Licensed approved
21 vendors to have access to our CDK files.” Another asked, “how much notice do we
22 need to give if we go with CVR?” The decision to switch was “coming from the
23 owner because of what CDK is telling them.” Another wrote, citing CDK’s
24 communications: “This is a 30-day notice that our Company has made the decision
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1 to not continue using DMV Desk as our source of completing the DMV process for
2 our Customers. This decision was not made lightly. We feel it is the best decision
3 for our Company at this time.” Another summed up the general response of dealers
4 deciding to switch: “We finally received the [CDK] letter, and as per our owner we
5 have decided to go a different direction. I apologize for the inconvenience please let
6 us know what the next steps are to cancel our service with you. *By no means is it*
7 *anything that has to do with your service, we just think it is smarter to go with a*
8 *company that works closely with the DMS we use daily.*” (emphasis added).

11 187. Other dealers, while not yet having made the decision to switch, have
12 expressed serious apprehension. “Help!” one dealer exclaimed. “Where do we go
13 from here??” Another asked, “DMV Desk going away? Per the attached notice
14 from CDK, they won’t be allowing DMV Desk to integrate with CDK as of
15 12/21/16.” Another wondered if there was anything MVSC could do: “Please see
16 attached letter from CDK. They are not going to give you access to our customers’
17 files. They want us to change registration companies. Please let me know if there is
18 anything you can do.” One industry leader summarized the general feeling: “CDK
19 has the owner and GMs all worried. . . . CDK has really gotten in everyone else’s
20 head.”

25 188. The California New Car Dealers Association has even had to get
26 involved. Representing over 1,100 dealers, it is the country’s largest state
27 association of franchised new car dealers. Many car dealers contacted the
28

1 Association to express their frustration with CDK and Reynolds. Commenting on
2 one especially sophisticated dealership, the Association's president wrote to MVSC:
3 "My concern is he is one of the most knowledgeable dealers we have in the state and
4 he is concerned; I can't imagine the impact their tactics might be having on less
5 informed dealers."
6

7 189. If there is one overriding response from dealers to CDK's and
8 Reynolds's actions, it is anger. The dealers are up in arms. By cutting off MVSC,
9 Defendants are disrupting the dealers' business. They are preventing dealers from
10 ensuring that car buyers, as required by California law, receive their registration and
11 license plates within 90 days of the purchase date. As reported by one industry
12 participant, the primary dealer response to Defendants' tactics is "outrage and
13 resentment."
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17 **E. To the Extent MVSC Has Been Able To Retain Dealerships, It is**
18 **Because of MVSC's Superior Product and Service**

19 190. The dealers that have remained with MVSC point to MVSC's superior
20 product and service as their reason for staying. "CDK has been in here telling me
21 they want us to convert," one dealer informed MVSC. "They did not tell me how
22 they are playing hard ball with the vendors. Either they have a third-party access
23 program or they don't. They should not be selective. As their client, I should still
24 have the right to pick and choose. We are happy with DMVDesk and we are getting
25 the job done." Similarly, another dealer wrote MVSC: "We have absolutely NO
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1 issues with your company, all I want, is to make sure our . . . service remains up to
2 the current standard that we are used to.”

3 191. Other dealers have been more direct in calling out Defendants’ tactics.
4 One dealer told CDK: “You are turning off MVSC just because you are trying to get
5 your inferior product from CVR back in here, aren’t you?” Another dealer delivered
6 the same message: “You are calling me just trying to get your inferior product back
7 in here. Not happening.” One dealer denounced CDK for its “scare tactics,” writing:
8 “We’re comfortable with DMV Desk and CVR didn’t give us the service we
9 currently experience.”
10

11 192. The California New Car Dealers Association has made clear to its
12 members that MVSC offers a far superior product and service than CVR. For
13 example, after one dealer expressed fear about MVSC being cut off from CDK’s
14 DMS, the president of the Association responded: “In the sense that CVR is an
15 approved vendor by DMV, yes they can replace DMVdesk, but in terms of service,
16 product improvement and innovation . . . there is no comparison. As you’ll recall, a
17 significant reason for our switch of licensed vendors from CVR to DMVdesk in 2014
18 was the poor quality of service provided to our dealers.” The Association told
19 another dealer that while it “is in no position to tell dealers whom to use for any
20 product, including DMS or electronic vehicle registration, we stand behind
21 DMVdesk and believe their product and service to be superior to other EVR
22 providers.”
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193. Even though many dealerships have remained with MVSC because of its superior service, other dealerships have chosen differently, deciding to switch as a result of Defendants' anticompetitive conduct. Even more serious, if CDK and Reynolds succeed in completely cutting off MVSC's access to dealers' DMS, then not even superior product and service will be able to save MVSC. In that instance, CVR's return to a monopoly position in California is assured.

VI. MVSC Has Suffered Antitrust Injury

194. Defendants' anticompetitive conduct has directly and significantly damaged MVSC. As a direct result of Defendants' conspiracy to block MVSC from the 3PA and RCI programs; their conspiracy to block MVSC from accessing dealer data at all; and CVR's monopolization of the Illinois EVR market and attempted monopolization of the California EVR market, MVSC has been directly damaged. For example, MVSC has substantially fewer customers than it otherwise would have. This has had a direct, negative impact on MVSC's financial position. While the precise amount of MVSC's damages will be proven at trial, MVSC's damages exceed many millions of dollars.

VII. Defendants' Actions Have Harmed Competition

195. Defendants' anticompetitive conduct has not just harmed MVSC, it has harmed competition itself. First, in concentrated markets, injury to a competitor harms not just that competitor, but competition generally. In the Illinois EVR market, CVR is effectively the only EVR provider with 95 percent market share. By

1 eliminating the ability of MVSC to compete in that market, Defendants have harmed
2 competition. Similarly, in California, after CVR acquired AVRS, there are now only
3 three EVR providers left. Because Defendants' anticompetitive conduct is causing
4 serious harm to MVSC in the concentrated California EVR market, competition has
5 been harmed.

6
7 196. Second, Defendants' actions have harmed innovation and the quality of
8 the products and services in the marketplace. Because states regulate output and
9 price of EVR services, EVR providers must compete on quality. But by propping up
10 an inferior product, and trying to eliminate a superior one, Defendants are hindering
11 innovation. By reducing the quality of the EVR product and services in the
12 marketplace, Defendants' actions have resulted in an increase in the quality-adjusted
13 price of those services. That is significant harm to competition and the market.

14
15 197. Third, Defendants' actions have harmed car dealerships. At a
16 fundamental level, Defendants are restricting dealership choice. Dealerships prefer
17 using MVSC because of its superior product and service, but Defendants are
18 impeding and thwarting dealerships from exercising that choice. For example,
19 because of Defendants' conduct, dealerships in Illinois have only one option for
20 EVR services, and that option – CVR – offers an inferior product and service.
21 Furthermore, in California, Defendants' actions have interrupted the provision of a
22 critical (and legally required) service. Indeed, by cutting off MVSC, Defendants
23 have even put the dealerships' business licenses at risk. California law requires that
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1 a car buyer receive the vehicle's registration and tags within 90 days of purchase.
2 Dealers are responsible for complying with that rule, and if they do not, their
3 business licenses can be revoked. By interrupting a dealer's EVR service – and
4 forcing dealers to switch to CVR, which has months-long delays in providing
5 registrations and license plates – Defendants have jeopardized dealerships' licenses.

7 198. Fourth, Defendants' actions have harmed car buyers. In California, it
8 takes CVR up to two months to provide the physical registration and license plates.
9 MVSC turns around the same in one day. The difference speaks for itself.

11 199. Finally, Defendants' actions have harmed the DMV and frustrated the
12 government's purpose in fostering competition. Defendants have eliminated
13 competition in Illinois. They are trying to eliminate competition in California, and
14 there is a dangerous probability they will succeed. Defendants are also foisting an
15 inferior product and service on the states' dealerships and citizens, which is contrary
16 to the very purpose the states established their EVR programs in the first place.

19 200. The California New Car Dealers Association summed it up best in
20 multiple messages to its member dealers. CDK's and Reynolds's "conduct as it
21 relates to the [EVR] program [is] troubling not only from a business perspective but
22 also from the damage it could do to consumers and the DMV for the roadblocks it is
23 creating in the vehicle registration process itself."

26 201. In another message to its members, the Association wrote: "Note that
27 the ONLY potential advantage that CVR has over DMVdesk is integration with
28

1 CDK's (and Reynolds's) DMS systems. While DMVdesk can provide the same
2 level of service to dealers (and continues to innovate to provide more functionality)
3 this is a short term, anticompetitive strategy by CDK to attempt to 'lock out'
4 DMVdesk. We are researching this DMS access issue from both a legal and political
5 standpoint because it has serious ramifications far beyond the current 'bullying'
6 tactics of CDK to exclude DMVdesk."
7

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9 **VIII. Defendants' Anticompetitive Conduct Has No Pro-Competitive**
10 **Justification**

11 202. There are no procompetitive justifications for Defendants' conduct. The
12 only purpose behind their conspiracy to boycott MVSC and campaign to cut off
13 MVSC completely from dealer data is to protect CVR's monopoly profits in Illinois
14 and regain them in California. Defendants' conduct does not reduce price, increase
15 output, or improve quality. On the contrary, Defendants' conduct suppresses
16 innovation, decreases quality in the EVR market, and increases the quality-adjusted
17 price of EVR services.
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20 203. Defendants have argued to dealers that CVR is "more secure" because it
21 has direct access to the DMS platforms. By extension, Defendants have claimed that
22 MVSC is "unsecure" and poses a threat to the dealers' data security. Even if that
23 were true – and it is not – that does not justify CDK and Reynolds boycotting
24 MVSC. Instead, if they cared about security and if direct access really was more
25 secure, then CDK and Reynolds would let MVSC participate in their third-party
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1 programs. If CDK and Reynolds are to be believed, security is a reason to let MVSC
2 in, not keep it out.

3 204. In any event, the “security” argument is just a pretext. As described by
4 industry insiders, the argument “is nothing more than a fear tactic deployed by
5 CDK.” MVSC maintains the highest-level security with respect to all sensitive,
6 confidential data. The confidential information EVR providers require relate to a car
7 buyer’s identification information, including name, address, date of birth, and
8 driver’s license number. The state of California mandates strict protections for this
9 data, and MVSC exceeds the state’s requirements. The security levels maintained by
10 MVSC are even higher than those used by the most secure DMS. For example, for
11 transferring the data from the dealer’s hard drive to DMVdesk, MVSC uses the
12 highest encryption protocol available to civilian organizations – the only higher
13 protocols are reserved for the U.S. military. Not only does MVSC have internal
14 audits of its data security, but it has regular external audits as well. MVSC has
15 passed every security audit without a blemish. MVSC has never had a data breach.

16 205. In the end, a CDK executive has confirmed to MVSC what the industry
17 knows: Defendants’ argument with respect to “security” is a pretext in order to
18 coerce third-party vendors into the third-party programs. The CDK executive
19 acknowledged that the rhetoric around “security” has little credibility. The
20 difference with respect to MVSC is that, no matter the “security” arguments, CDK
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1 and Reynolds have agreed to never allow MVSC to participate in their third-party
2 programs.

3
4 **FIRST CAUSE OF ACTION**
5 **VIOLATION OF SECTION 1 OF THE SHERMAN ACT**
6 **(CDK and Reynolds)**

7 206. MVSC incorporates by reference the preceding allegations.

8 207. CDK and Reynolds entered into and engaged in a conspiracy in
9 unreasonable restraint of trade in violation of Section 1 of the Sherman Act, 15
10 U.S.C. § 1, and Section 4 of the Clayton Act, 15 U.S.C. § 15.

11 208. The conspiracy consisted of a continuing agreement, understanding, or
12 concerted action between CDK and Reynolds – who are horizontal competitors of
13 one another – in furtherance of which they agreed to block MVSC from their third-
14 party DMS programs and cut off MVSC’s access to obtain the necessary dealer data
15 by other means. Defendants’ conspiracy is a per se violation of the federal antitrust
16 laws and is, in any event, an unreasonable and unlawful restraint of trade and
17 commerce.
18

19 209. The purpose of Defendants’ conspiracy was and is to drive MVSC out
20 of the California EVR market and prevent MVSC from competing with CVR in the
21 Illinois EVR market, thereby protecting and increasing the flow of monopoly profits
22 from CVR to CDK and Reynolds.
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1 210. Defendants' conspiracy, which amounts to a group boycott, was
2 intended to harm interstate commerce, and it has had an actual, substantial effect on
3 interstate commerce.

4
5 211. Through their conspiracy, Defendants have caused actual injury to
6 competition in both the California EVR market and the Illinois EVR market.

7 212. The boycott is cutting off MVSC's access to dealer data that MVSC
8 needs in order to compete with CVR in the California and Illinois EVR markets.

9
10 213. CDK and Reynolds possess a dominant position in the DMS market,
11 which they have utilized to further the conspiracy.

12
13 214. Defendants' conspiracy and anticompetitive conduct in furtherance
14 thereof do not enhance efficiency or competition in the California and Illinois EVR
15 markets. On the contrary, Defendants' conduct has produced only anticompetitive
16 effects in these markets.

17
18 215. As a direct and proximate result of Defendants' unlawful conduct,
19 MVSC has suffered injury to its business or property. MVSC is entitled to treble
20 damages for the violations of the Sherman Act alleged herein.

21
22 **SECOND CAUSE OF ACTION**
23 **MONOPOLIZATION OF THE ILLINOIS EVR MARKET IN VIOLATION**
24 **OF SECTION 2 OF THE SHERMAN ACT**
25 **(CDK and CVR)**

26 216. MVSC incorporates by reference the preceding allegations.
27
28

1 217. Defendants CDK and CVR have unlawfully monopolized the Illinois
2 EVR market in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

3 218. CDK owns 80 percent of CVR and controls its management and day-to-
4 day operations and activities.

5
6 219. For purposes of Section 2, given its substantial control over CVR (let
7 alone its direction of CVR's day-to-day operations), CDK is considered a competitor
8 in the Illinois EVR market.

9
10 220. CVR possesses monopoly power in the EVR market in Illinois, where
11 CVR has a market share exceeding 95 percent.

12
13 221. CDK and CVR – in conspiracy with Reynolds – have the demonstrated
14 ability to exclude competitors from the Illinois EVR market by denying them
15 participation in the 3PA and RCI programs.

16
17 222. CDK and CVR – in conspiracy with Reynolds —have willfully acquired
18 and maintained monopoly power in the Illinois market through anticompetitive
19 means, including by engaging in a group boycott of MVSC.

20
21 223. Through the monopolization of the Illinois EVR market, CDK and CVR
22 have harmed competition.

23 224. As a direct and proximate result of Defendants' unlawful conduct,
24 MVSC has suffered injury to its business or property. MVSC is entitled to treble
25 damages for the violations of the Sherman Act alleged herein.
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THIRD CAUSE OF ACTION
ATTEMPTED MONOPOLIZATION OF THE CALIFORNIA EVR MARKET
IN VIOLATION OF SECTION 2 OF THE SHERMAN ACT
(CDK and CVR)

225. MVSC incorporates by reference the preceding allegations.

226. Defendants CDK and CVR have unlawfully attempted to monopolize the California EVR market in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

227. CDK owns 80 percent of CVR and controls its management and day-to-day operations and activities.

228. For purposes of Section 2, given its substantial control over CVR (let alone its direction of CVR's day-to-day operations), CDK is considered a competitor in the California EVR market.

229. CDK and CVR – in conspiracy with Reynolds – specifically intend to monopolize the California EVR market. Their specific intent to monopolize is apparent from their array of anticompetitive conduct that lacks any legitimate business justification. They conspired to block MVSC from the 3PA and RCI third-party DMS programs and cut off MVSC's access to obtain the necessary dealer data by other means, including through intermediaries and manual workarounds.

230. CVR has a dangerous probability of achieving monopoly power in the California EVR market, where it once had a monopoly and currently controls 40 percent of the market. Most importantly, CDK and CVR – in conspiracy with

1 Reynolds – are attempting to block MVSC from obtaining the data necessary to
2 compete in the EVR market. Moreover, the EVR market in California is
3 concentrated, with a recent trend toward further consolidation; CVR benefits from
4 nationwide economies of scale and exclusive direct access to dealer data; and
5 potential new entrants to the California EVR market face extensive legal licensing
6 requirements and high capital costs.
7

8
9 231. Through their attempted monopolization of the California EVR market,
10 CDK and CVR have harmed competition.

11 232. As a direct and proximate result of Defendants’ unlawful conduct,
12 MVSC has suffered injury to its business or property. MVSC is entitled to treble
13 damages for the violations of the Sherman Act alleged herein.
14

15 **FOURTH CAUSE OF ACTION**
16 **CONSPIRACY TO MONOPOLIZE THE ILLINOIS AND CALIFORNIA**
17 **EVR MARKETS IN VIOLATION OF SECTION 2 OF THE SHERMAN ACT**
18 **(all Defendants)**

19 233. MVSC incorporates by reference the preceding allegations.

20 234. Defendants CDK, Reynolds, and CVR have unlawfully conspired to
21 monopolize the Illinois and California EVR markets in violation of Section 2 of the
22 Sherman Act, 15 U.S.C. § 2.
23

24 235. Defendants CDK, Reynolds, and CVR have a common purpose to
25 monopolize the Illinois and California EVR markets and have committed multiple
26 overt acts in furtherance of that conspiracy.
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236. Defendants CDK, Reynolds, and CVR have a specific intent to monopolize the Illinois and California EVR markets through CVR, as shown by their anticompetitive conduct that lacks any legitimate business justification.

237. CVR has monopoly power in the Illinois EVR market and a dangerous probability of achieving monopoly power in the California EVR market.

238. CDK (80 percent) and Reynolds (20 percent) own CVR. CDK controls CVR's management and day-to-day operations and activities.

239. Through their conspiracy to monopolize the Illinois and California EVR markets, CDK, Reynolds, and CVR have harmed competition.

240. As a direct and proximate result of Defendants' unlawful conduct, MVSC has suffered injury to its business or property. MVSC is entitled to treble damages for the violations of the Sherman Act alleged herein.

FIFTH CAUSE OF ACTION
VIOLATION OF ILLINOIS ANTITRUST ACT
(CDK and CVR)

241. MVSC incorporates by reference the preceding allegations.

242. Defendants CDK and CVR have monopolized the EVR market in Illinois in violation of the Illinois Antitrust Act, 740 Ill. Comp. Stat. 10/3(3), for all the reasons set forth in the preceding allegations.

243. Defendants committed this violation willfully, as that term is applied under the Illinois Antitrust Act.

244. As a direct and proximate result of Defendants' unlawful conduct, MVSC has suffered injury to its business or property. MVSC is entitled to treble damages for the violations of the Illinois Antitrust Act alleged herein.

SIXTH CAUSE OF ACTION
VIOLATION OF CARTWRIGHT ACT
(CDK and Reynolds)

245. MVSC incorporates by reference the preceding allegations.

246. CDK and Reynolds entered into and engaged in a conspiracy in unreasonable restraint of trade in violation of the California Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, for all the reasons set forth in the preceding allegations. Defendants' conspiracy is a per se violation of the Cartwright Act and is, in any event, an unreasonable and unlawful restraint of trade and commerce.

247. As a direct and proximate result of Defendants' unlawful conduct, MVSC has suffered injury to its business or property. MVSC is entitled to treble damages for the violations of the Cartwright Act alleged herein.

SEVENTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW
(all Defendants)

248. MVSC incorporates by reference the preceding allegations.

249. The California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 *et seq.*, defines "unfair competition" to include any "unlawful, unfair, or fraudulent business act or practice."

1 250. Defendants have engaged in “unlawful” business acts and practices as
2 alleged herein in violation of, among other laws, the Sherman Act, 15 U.S.C. §§ 1
3 and 2; the Cartwright Act, Cal. Bus. & Prof. Code § 16720; and California common
4 law, including the torts of interference with contract and prospective economic
5 advantage.

6
7 251. Defendants’ acts and practices as alleged herein have also been “unfair”
8 under the UCL. Defendants’ conduct has threatened an incipient violation of the
9 antitrust laws (namely, the Sherman Act, 15 U.S.C. §§ 1 and 2, and the Cartwright
10 Act, Cal. Bus. & Prof. Code § 16720), violated the policy and spirit of those laws
11 (resulting in an effect comparable to an antitrust violation), and significantly
12 threatened and harmed competition in the California EVR market. Furthermore, any
13 utility from Defendants’ conduct does not outweigh the harm it causes to
14 competitors, car dealers, or car buyers.

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18 252. A substantial portion of the unlawful and unfair acts and practices
19 alleged herein occurred in California and the harm to MVSC, car dealers, and car
20 buyers was inflicted in California, for all the reasons set forth in the preceding
21 allegations.

22
23 253. As a direct and proximate result of Defendants’ unlawful and unfair
24 conduct, MVSC has suffered injury to its business or property. MVSC is entitled to
25 restitution in an amount to be proven at trial.
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EIGHTH CAUSE OF ACTION
VIOLATION OF ILLINOIS CONSUMER FRAUD AND DECEPTIVE
BUSINESS PRACTICES ACT
(all Defendants)

254. MVSC incorporates by reference the preceding allegations.

255. The Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), 815 Ill. Comp. Stat. 505/1 *et seq.*, makes unlawful “[u]nfair methods of competition and unfair or deceptive acts or practices . . . in the conduct of any trade or commerce.”

256. Defendants have engaged in unfair methods of competition and unfair acts or practices in violation of the ICFA.

257. Defendants’ group boycott of MVSC, thereby eliminating the ability of MVSC to compete in the Illinois EVR market, is contrary to Illinois public policy, as expressed in statutes such as the Illinois Antitrust Act, 740 Ill. Comp. Stat. 10/1 *et seq.*, which favors free and fair competition between businesses.

258. Defendants’ conduct as alleged herein is oppressive and unscrupulous, and as a result of Defendants’ group boycott of MVSC, Illinois car dealers lack a meaningful choice in EVR provider.

259. By preventing competition in the EVR market, Defendants have caused substantial aggregate injury to car dealers in the form of inferior EVR services resulting from the absence of fair competition. Defendants’ actions have prevented car dealers from having a choice between EVR providers who can compete on

1 quality-adjusted price, including products and services such as technical support,
2 dealer training, registration auditing (which reduces the rate of errors), and computer
3 interface design. This injury is not outweighed by any countervailing consumer
4 benefit resulting from Defendants' conduct. Because Defendants operate an EVR
5 monopoly and exclude competitors such as MVSC, car dealers cannot reasonably
6 avoid this injury.
7

8
9 260. Defendants' violations of the ICFA implicate consumer protection
10 concerns because Defendants' unfair practices – namely, their monopolization of the
11 Illinois EVR market through anticompetitive acts – are directed at and effect the
12 statewide EVR market generally. MVSC's requested relief would serve the interests
13 of Illinois car dealers by enabling new EVR providers, including MVSC, to compete
14 for their business, resulting in increased consumer choice and market-driven
15 innovation in EVR services.
16
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18 261. As a direct and proximate cause of Defendants' violations of the ICFA,
19 MVSC has been unable to enter into contracts with car dealers to provide EVR
20 services. MVSC has suffered economic injury as a result.
21

22 262. A substantial portion of the underlying conduct and events alleged
23 herein occurred in Illinois, for all the reasons set forth in the preceding allegations.
24

25 263. As a direct and proximate result of Defendants' unfair conduct, MVSC
26 has been harmed by its inability to compete in the Illinois EVR market. MVSC is
27
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1 entitled under 815 Ill. Comp. Stat. 505/10a to restitution, damages – including
2 punitive damages – in amounts to be proven at trial.

3
4 **JURY DEMAND**

5 In accordance with Federal Rule of Civil Procedure 38(b), MVSC demands a
6 trial by jury on all issues so triable.

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, MVSC prays that the Court:

10 (a) adjudge and decree that the conduct alleged herein is an unlawful restraint
11 of trade in violation of Section 1 of the Sherman Act;

12
13 (b) adjudge and decree that the conduct alleged herein is an unlawful
14 monopoly, attempted monopolization, and conspiracy to monopolize in violation of
15 Section 2 of the Sherman Act;

16
17 (c) permanently enjoin the unlawful conduct alleged herein;

18 (d) order CDK and Reynolds to allow MVSC to obtain dealer data by either
19 participating in the 3PA and RCI programs on reasonable, non-discriminatory terms
20 or through some other means;

21
22 (e) award MVSC damages, as provided under the federal antitrust laws and
23 state antitrust laws, and that a joint and several judgment in favor of MVSC be
24 entered against Defendants in an amount to be trebled in accordance with such laws;

25
26 (f) award MVSC its reasonable costs and expenses incurred in this action,
27 including expert fees and attorney's fees;
28

(g) award MVSC prejudgment interest; and
(h) award MVSC any such further relief that the Court may deem just and proper.

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Respectfully submitted,

/s/ Michael N. Nemelka

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